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JOHN SMITH (1616-1652): PLATONIST AND MYSTIC

ALTHOUGH not the best known among the Cambridge Platonists,[1] John Smith is in many ways the most attractive figure in the group and the one who is most rightly called a Platonist. The writings that he produced during his short career are not great in number or bulk, but they possess a character and a grace that set them apart and give them an unusual distinction and a peculiar value. In certain ways they are of greater worth than the more ambitious productions of some of his contemporaries and associates in philosophy and religion.

[1] For the Cambridge Platonists in general, the following may be consulted: John Tulloch, *Rational Theology and Christian Philosophy in the Seventeenth Century.* 2 vols. Edinburgh, Blackwood, 1872-4; E. T. Campagnac, *The Cambridge Platonists.* London, Frowde, 1901; W. R. Sorley, *A History of English Philosophy.* New York, Putnam, 1921, chapter V; F. J. Powicke, *The Cambridge Platonists.* New York, J. M. Dent, 1926; W. R. Inge, *The Platonic Tradition in English Religious Thought.* New York, Longmans, Green, 1926; G. P. H. Pawson, *The Cambridge Platonists and Their Place in Religious Thought.* London, Society for the Propagation of Christian Knowledge, 1930; J. H. Muirhead, *The Platonic Tradition in Anglo-Saxon Philosophy.* London, Macmillan, 1931. J. J. De Boer, *The Theory of Knowledge of the Cambridge Platonists.* Madras, Methodist Publishing House, 1931. Ernst Cassirer, *Die Platonische Renaissance in England und die Schule von Cambridge.* Leipzig, Teubner, 1932. W. C. De Pauley, *The Candle of the Lord.* New York, Macmillan, 1937.

Because of the spirit and manner in which he wrote as well as because of what he wrote, he deserves a place of honor in the story of his school.

John Smith was born early in 1616 at Achurch, a village near Oundl, in Northamptonshire, where his father, also named John Smith, was a farmer. His parents are reported to have been advanced in life at the time of his birth,[2] and the parish register at Achurch records the burial of "Katharine Smith, the wife of John Smith," as taking place on April 4, 1616. Perhaps the death of his mother accounts for the delay in his baptism, as this sacrament is given as administered to him on February 15, 1617. The boy was evidently predestined to a life of learning and at the age of twenty, on April 5, 1636, he was admitted as a sizar of Emmanuel College, Cambridge. There he had Benjamin Whichcote as tutor. He received the degree of Bachelor of Arts in 1640 and became a Master of Arts in 1644. Because of a statute then in force, to the effect that fellowships could not be held at the same time by two natives of the same county, Smith could not rise higher in his own college. A fellow student, William Dillingham, also of Northamptonshire, had been elected fellow of Emmanuel in 1642 and subsequently became master of the college.

The civil and religious quarrels of the time served Smith in good stead as far as his academic career was concerned. In April, 1644, the Earl of Manchester, empowered by a parliamentary committee for regulating the affairs of Cambridge University, removed Dr. Edward Martin from office as president of Queen's College and ejected a number of fellows for "non-residence," "not returning to College on summonses," and "refusing to take the solemn league and covenant." On April

[2] Cf. Simon Patrick, *A Sermon Preached at the Funeral of Mr. John Smith, late Fellow of Queen's College in Cambridge, who departed this life Aug. 7, 1652.* The sermon is given in both the Worthington and the Williams editions of Smith's works noted below.

11 he appointed a new president of Queen's College and nine fellows, among whom was John Smith. In the same year Smith was named Hebrew lecturer and censor philosophicus, and in 1645 Greek praelector. He was not ordained to the ministry until sometime between 1646 and 1650. On September 18, 1650, he was appointed dean and catechist of his college. Never of robust health, Smith held these latter places for less than two years, dying of consumption on August 7, 1652. The funeral sermon preached over him by Simon Patrick is a principal source of information concerning Smith's character. The sermon is most elaborate in its praise of his virtues, industry, learning, abilities as a tutor, usefulness as a fellow, and Christian faith. One passage concludes:

> In a word, he was, as Eunapius speaks of Longinus, "a living library," better than that which he hath given to our college, and "a walking study," that carried his learning about with him. I never got so much good among all my books by a whole day's plodding in a study, as by an hour's discourse I have got with him. For he was not a library locked up, nor a book clasped, but stood open for any to converse withal that had a mind to learn.

As dean of Queen's College Smith delivered a number of sermons and lectures that remain the only published record of his thought and constitute his claim to remembrance. The discourses were edited by John Worthington, the diarist, and were first published in 1660.[3] Since then they have been reprinted several times, the best edition being that of Henry Griffin Williams.[4] Smith seems also to have written an unpublished dissertation entitled *Pietati studere ex intuitu mercedis non est illicitum*,[5] and in his preface "To the Reader"

[3] *Select Discourses.* London, 1660.

[4] Cambridge, At the University Press, 1859. Unless otherwise noted, all quotations and biographical material are from this edition. In his edition Williams has modernized the punctuation and spelling. Unfortunately, in certain places he has silently changed the wording.

[5] Worthington, p. 506.

Worthington states, "There are some other pieces of this author's both English and Latin, which make another considerable volume, especially if some papers of his, in other hands, can be retrieved." [6]

Smith's studies on philosophy and religion are ten in number: "A Discourse concerning the True Way or Method of Attaining to Divine Knowledge"; "A Short Discourse on Superstition"; "A Short Discourse on Atheism"; "A Discourse Demonstrating the Immortality of the Soul"; "A Discourse Concerning the Existence and Nature of God"; "Of Prophecy"; "A Discourse Treating of Legal Righteousness; Evangelical Righteousness, or, the Righteousness of Faith; the Difference between the Law and the Gospel; the Old and the New Covenant; Justification and Divine Acceptance; the Conveyance of the Evangelical Righteousness to Us by Faith"; "A Discovery of the Shortness and Vanity of a Pharisaical Righteousness"; "The Excellency and Nobleness of True Religion," and "A Christian's Conflicts and Conquests; or a Discourse concerning the Devil's Active Enmity and Continual Hostility against Man—The Warfare of a Christian Life—the Certainty of Success and Victory in This Spiritual Warfare—The Evil and Horridness of Magical Arts and Rites; Diabolical Contracts, etc."

The view of life that is evidenced in these writings is that of a sincerely religious and deeply spiritual man. Smith holds that it is only in true religion, that is, in religion lived and acted out as well as known, that genuine knowledge and lasting happiness will be found. His emphasis is upon practice rather than upon theory. A good life is necessary for true belief, since truth and goodness can never be separated without harm to both. More is necessary for the attainment of truth than mere "logical analysis." "Divine truth is better understood, as it unfolds itself in the purity of men's hearts and lives, than in all those subtile

[6] Williams, p. xxxiv.

niceties into which curious wits may lay it forth." [7] This relation between thought and deeds is seen in the Greek philosophers. "Aristotle himself thought a young man unfit to meddle with the grave precepts of morality, till the heat and violent precipitancy of his youthful affections were cooled and moderated." (p. 10.) So also with Pythagoras, Socrates, and the Platonists: all of them saw that morality precedes true knowledge. Most of all is this verified in the life of Christ:

> And therefore our Saviour, who is the great master of it, would not, while He was here upon earth, draw it up into any system or body, nor would His disciples after Him; He would not lay it out to us in any canons or articles of belief, not being indeed so careful to stock and enrich the world with opinions and notions, as with true piety, and a Godlike pattern of purity, as the best way to thrive in all spiritual understanding. His main scope was to promote a holy life, as the best and most compendious way to a right belief. (p. 9.)

Because of this emphasis upon conduct instead of upon sectarian opinion, Smith exhibits a tolerance unusual for his period in English history and especially so among the men with whom his name is associated. He writes that it is well for us

> . . . to learn not to devote or give up ourselves to any private opinions or dictates of men in matters of religion, nor too zealously to propugn the dogmas of any sect. As we should not, like rigid censurers, arraign and condemn the creeds of other men which we comply not with, before a full and mature examination of them, ripened not only by the natural sagacity of our own reason, but by the benign influence of holy and mortified affection: so neither should we over hastily *credere in fidem alienam*—subscribe to the symbols and articles of other men. They are not always the best men that blot most paper: truth is not, I fear, so voluminous, nor swells into such a mighty bulk as our books do. (p. 12.)

Smith holds that "'he that will find truth must seek it with a free judgment and a sanctified mind': he that thus seeks, will

[7] "Concerning the True Way or Method of Attaining to Divine Knowledge," p. 9.

find; he shall live in truth, and that shall live in him; it shall be like a stream of living waters issuing out of his own soul." (p. 13.) However, all men are not of this sort and Smith divides men as seekers after truth into four classes: 1. Those whose "highest reason" is merely "'complying with their senses';—and both conspire together in vulgar opinion." 2. Those who depend only upon their own reason and understanding, and thus "though they may not be so well prepared for divine virtue . . . yet they are not immature for human." 3. Those "whose soul is already purged by this lower sort of virtue, and is continually flying off from the body and bodily passion and returning into himself," but who still retain, "an ill ferment of self-love." 4. The true metaphysical and spiritual men. One of these by "running and shooting up above his own logical or self-rational life, pierceth into the highest life; such a one who by universal love and holy affection, abstracting himself from himself, endeavours the nearest union with the divine essence that may be." (pp. 18-21.)

The basis of all religion, Smith in his tract on the immortality of the soul holds with "the author of the Epistle to the Hebrews," to be "That God is, and that He is a rewarder of them that seek Him." To this he adds "the immortality of the reasonable soul" and also, if the "fundamental articles of the Christian religion" be had, "the communication of God to mankind through Christ." The principal natural way to attain to a knowledge of God is by a contemplation of the nature of our own souls: "We cannot think of Him but according to the measure and model of our own intellect, or frame any other idea of Him than what the impressions of our own souls permit us: and therefore the best philosophers have always taught us to inquire for God within ourselves; 'Reason in us,' as Cicero tells us, 'being *participata similitudo rationis aeternae.*'"[8]

[8] "A Discourse Demonstrating the Immortality of the Soul," p. 62. As Williams points out, the words are not Cicero's but from St. Thomas Aquinas:

Smith continues: ". . . and accordingly, some good expositors have interpreted that place in St. John's gospel, 'He is the true light which enlightens every man that cometh into the world'; which if I were to gloss upon in the language of the Platonists, I should do it thus: λόγος ἐστι φῶς ψυχῶν—'the Eternal word is the light of souls'; which the vulgar Latin referred to in Psal. iv, 7, *Signatum est supra nos lumen vultus tui, Domine*, as Aquinas [9] observes." (pp. 62-63.)

Because of his Platonic and Augustinian cast of thought, Smith gives particular attention to the immortality of the soul. There is, he holds, no strict need of a demonstration of the immortality of the soul since it " *might be assumed rather as a principle or postulatum, seeing the notion of it is apt to insinuate itself into the belief of the most vulgar sort of men.*" (p. 63.) Yet Smith does not grant with Cicero that the *consensus gentium* is " enough to conclude a law and maxim of nature by," since " error and superstition may strongly plead this argument." However, in the case of " a prime notion, that hath no dependency on any other antecedent to it," it would seem that it is the result of " the common dictate of nature or reason acting alike in all men." (p. 64.)

To men who reflect upon the powers and operations of their souls, the arguments offered for immortality will be demonstrative. To others, they may be only probable. Hence rightly to understand these arguments " *there must be an antecedent converse with our own souls.*" (p. 66.) Finally, Smith premises " this hypothesis: *that no substantial and indivisible thing ever*

Ipsum enim lumen intellectuale, quod est in nobis, nihil est aliud quam quaedam participata similitudo luminis increati, in quo continentur rationes aeternae. *Summa Theologica*, I, Q. LXXXIV, art. 5, c.

[9] The reference is to the same article in the *Summa Theologica*: Unde in Psalm. iv, 6 dicitur: *Multi dicunt, Quis ostendit nobis bona?* Cui quaestioni Psalmista respondet, dicens: *Signatum est super nos lumen vultus tui, Domine*; quasi dicat: *Per ipsam sigillationem divini luminis in nobis omnia demonstrantur.*

perisheth." (p. 66.) His arguments for immortality are essentially the traditional arguments and are four in number.

Against the Epicureans Smith shows that the soul of man is incorporeal. It is "something really distinct from his body, of an indivisible nature, and so cannot be divided into such parts as should flit one from another; and, consequently, is apt of its own nature to remain to eternity, and so will do, except the decrees of heaven should abandon it from being." (p. 69.) This is shown by an argument *ab absurdo* to the effect that the supposition of the atomists and others that the soul is material leads to contradictions. It is also shown from the fact that man is capable of operations above the powers of mere sense. The soul possesses "that mental faculty and power whereby we judge and discern things." (p. 81.) Again, there is "such a faculty within our own souls as collects and unites all the perceptions of our several senses, and is able to compare them together; something in which they all meet as in one centre." (p. 82.) Thirdly, memory and "prevision of things to come" are spiritual powers that indicate immortality, for the soul is like a sunbeam continually flowing forth from the sun and yet returning to it, which "never forgets what itself was: and though it may number out never so vast a length of its duration, yet it never comes nearer to its old age, but carrieth a lively sense of its youth and infancy along with it, which it can at pleasure lay a fast hold on." (p. 84.)

A second argument for immortality is based upon a distinction found among our actions. Some are "automatical," others are spontaneous. We see "that many things that are done by us, are at the dictate and by the commission of our own wills." (p. 88.) It is not by mere "naked speculation" that our bodies grow hungry and call for food. We learn this from experience: "we first find our own souls solicited by those motions, which yet we are able to gainsay, and to deny those petitions, which they offer up to us." The control of our will

over the body in many instances is clear. "All which, as they evidently manifest a true distinction between the soul and the body, so they do as evidently prove the supremacy and dominion which the soul hath over the body." (p. 89.) Smith's conclusion is: "Whatsoever essence finds this freedom within itself, whereby it is absolved from the rigid laws of matter, may know itself also to be immaterial." (p. 93.)

In accordance with seventeenth-century interests, Smith's third argument is from the abstract character of mathematical notions. The ideas of pure points, lines, "latitude abstracted from all profundity," equality, proportion, symmetry and asymmetry, infinite indivisibility, and the like, must be recognized as "the true characters of some immaterial being, seeing they were never buried in matter, nor extracted out of it: and yet these are transcendently more certain and infallible principles of demonstration than any sensible thing can be." (p. 94.)

The fourth argument is "That those clear and stable ideas of truth which are in man's mind evince an immortal and immaterial substance residing in us, distinct from the body. (p. 97.) Following Proclus in his commentary upon Plato's *Timaeus*, Smith finds four degrees of knowledge: (1) "a naked perception of sensible impressions, without any work of reason"; (2) "a miscellaneous kind of knowledge arising from a collation of its sensations with its more obscure and dark ideas," (3) "discourse and reason."

> There is, therefore, fourthly, *νόησις ἀμετάβατος*, which is a naked intuition of eternal truth, which is always the same, which never rises nor sets, but always stands still in its vertical, and fills the whole horizon of the soul with a mild and gentle light. There are such calm and serene ideas of truth, as shine only in composed souls, and cannot be discerned by any troubled or unstable fancy, that necessarily prove a *μόνιμον καὶ στάσιμον τι*,—"some permanent and stable essence" in the soul of man, which (as Simplicius on Epictetus well observes) ariseth only "from some immoveable and unchangeable cause which is always the same." For these operations about truth we now speak of, are not

χρονικαὶ ἐνέργειαι,—any "chronical energies,"—as he further expresses it; but the true badges of an eternal nature, and speak a ταυτότης and στάσις (as Plato is wont to phrase it) in man's soul. Such are the archetypal ideas of justice, wisdom, goodness, truth, eternity, omnipotency, and all those either moral, physical, or metaphysical notions, which are either the first principles of science, or the ultimate complement and final perfection of it. These we always find to be the same, and know that no exorcisms of material mutations have any power over them: though we ourselves are but of yesterday, and mutable every moment, yet these are eternal, and depend not upon any mundane vicissitudes; neither could we ever gather them from our observation of any material thing where they were never sown.

If we reflect but upon our souls, how manifestly do the species of reason, freedom, perception, and the like, offer themselves to us, whereby we may know a thousand times more distinctly what our souls are than what our bodies are? For the former we know by an immediate converse with ourselves, and a distinct sense of their operations; whereas all our knowledge of the body is little better than merely historical, which we gather up by scraps and piecemeal from more doubtful and uncertain experiments which we make of them: but the notions which we have of a mind, *i. e.* something within us that thinks, apprehends, reasons, and discourses, are so clear and distinct from all those notions which we can fasten on a body, that we can easily conceive that, if all body-being in the world were destroyed, yet we might then as well subsist as we do now. (pp. 97-99.)

The treatise on immortality is concluded by a consideration of Aristotle's opinion on the immortality of the soul and by a discussion of the notions of *intellectus agens* and *intellectus patiens.* Smith also considers the objection to immortality based on "that strange kind of dependency which it appears to have on the body." In his answer he makes use of the doctrine of animal spirits. Smith takes a verbal fling at Aristotle, "whom so many take for the great intelligencer of nature, and omniscient oracle of truth; though it be too manifest that he hath so defaced the sacred monuments of the ancient metaphysical theology by his profane hands, that it is hard to see that lovely face of truth which was once engraven upon them." (pp.

107-8.) In this passage, however, he indulgences but mildly in the anti-Aristotelian mode of thinking and writing that produced such extravagance of judgment and such violence of language among some of his contemporaries.

When Smith turns to a discussion of the existence and nature of God, he shows himself to be original and ambitious. Contrary to the common observation that we can better know that God is than what He is, Smith holds that he " shall not so much demonstrate that He is, as *what* He is." The best way for us to know God is " by an attentive reflection upon our own souls." (p. 127.) As Phidias inscribed his name so deeply on the buckler of his statue of Minerva that the letters could not be effaced without ruining the statue, so it is with the impression of God upon our souls. God alone could " write His own name so as that it might be [not] read, except in rational natures." (p. 128.) Hence " The schoolmen have well compared sensible and intelligible beings in reference to the deity, when they tell us the one do only represent *vestigia Dei*, the other *faciem Dei.*" (p. 130.) From this attentive reflection on our own souls we gain the ideas of pure and perfect reason. Our minds rise to the notion of " the most perfect mind and understanding," of " a pure and simple mind and intellect," and of the " one infinite source of all that reason and understanding which themselves partake of, in which they live, move, and have their being." (pp. 131-2.)

Will and power within us lead to the notions of God's omnipotence and of His " Almighty Love." From this self-contemplation we come likewise to a knowledge of God's eternity, omnipresence, and absolute freedom. Moreover, " God is not better defined to us by our understandings than by our wills and affections: He is not only the eternal reason, that Almighty mind and wisdom which our understandings converse with, but He is also that unstained beauty and supreme good to which our wills are perpetually aspiring: and wheresoever we find true beauty, love, and goodness, we may say, here or there is God."

(p. 141.) In this section Smith also makes use of the familiar thought of St. Augustine: "For Thyself hast Thou made us, O God, and our hearts are restless till they rest in Thee."

> Ever since our minds became so dim-sighted as not to pierce into that original and primitive blessedness which is above, our wills are too big for our understandings, and will believe their beloved prey is to be found where reason discovers it not: they will pursue it through all the vast wilderness of this world, and force our understandings to follow the chase with them: nor may we think to tame this violent appetite, or allay the heat of it, except we can look upward to some Eternal and Almighty goodness which is alone able to master it.
>
> It is not the nimbleness and agility of our own reason which stirs up these eager affections within us (for then the most ignorant sort of men would never feel the sting thereof), but indeed some more potent nature which hath planted a restless notion within us that might more forcibly carry us out to itself; and, therefore, it will never suffer itself to be controlled by any of our thin speculations, or satisfied with those airy delights that our fancies may offer to it: it doth not, it cannot, rest itself any where but upon the centre of some Almighty good, some solid and substantial happiness; like the hungry child that will not be stilled by all the mother's music, or change its sour and angry looks for her smiling countenance: nothing will satisfy it but the full breasts. (pp. 139-140.)

From his consideration of the divine nature and its attributes, Smith draws certain conclusions. These are the following:

First, whatever God does or produces outside of Himself is done freely and out of His own love and goodness. Continuing the Platonic and scholastic doctrine, it is shown that God does not create because of any lack of perfection within Himself: "When God made the world, it was not out of a piece of self-interest, as if He had any design to advance Himself, or to enlarge His own stock of glory and happiness; for what beauty or perfection can be had in this whole creation, which was not before contained in Himself that could add any thing to His own stature, which He found not already in Himself?" And again:

"But we must not think that God, who is infinite fulness, would seek for any thing without Himself: He needs neither our happiness nor our misery, in order to make Himself more illustrious; but, being full in Himself, it was His good pleasure to communicate of His own fulness . . . God does then most glorify and exalt Himself in the most triumphant way that may be, *ad extra*, or out of Himself, if I may so phrase it, when He most of all communicates Himself, and when He erects such monuments of His own majesty, wherein His own love and goodness may live and reign." (pp. 143-5.)

Since our end is the glory of God, it follows that "we then most of all glorify Him, when we partake most of Him; when our serious endeavors after a true assimilation to Him, and conformity to His image, declare that we think nothing better than He is, and are, therefore, most ambitious of being one with Him, by a universal resignation of ourselves unto Him." (pp. 146-7.)

Smith's second deduction is "That that Almighty wisdom and goodness which first made all things, doth also perpetually conserve and govern them." (p. 147.) Recalling the thesis that there must be a prime mover as the source of all motion, Smith recalls as well that "in beings there must be some first essence upon which all other must constantly depend." No finite being can come into existence of itself, nor "can it remain here without license and assistance" of God's power. God preserves all things in existence and orders and disposes them in the best way. The deistic thesis, soon to become so popular, is rejected by Smith: God "did not make the world as a mere exercise of His Almighty power, or to try His own strength, and then throw it away from Himself without any further attention to it." God is therefore not remote from the universe and Smith agrees, as "the ancient philosophy was wont rather to say, that the world was in God, than that God was in the world. He did not look without Himself to search for some solid foundation that might bear up this weighty building, but indeed reared it

up within Him, and spread His own omnipotency under it and through it: and, being centrally in every part of it, He governs it according to the prescript of His own unsearchable wisdom and goodness, and orders all things for the best." (p. 148.)

Smith's third conclusion is "That all true happiness consists in a participation of God, arising out of the assimilation and conformity of our souls to Him; and, that the most real misery ariseth out of the apostasy of souls from God." The development of this thesis is one of the finest passages in Smith's book. Of these pages it is not too much to say that English philosophical literature, poor as it is in authors of spiritual insight and emotional intensity, has few things to show that can be called their equal. Here in the seventeenth-century Cambridge man is the genuine accent of the great mystics from whom he derives.

Happiness is nothing else, as we usually describe it to ourselves, but the enjoyment of some chief good: and therefore the Deity is so boundlessly happy, because it is every way one with its own immense perfection; and everything so much the more feelingly lives upon happiness, by how much the more it comes to partake of God, and to be made like to Him: and, therefore, the Platonists well defined it to consist *in idea boni*. And, as it is impossible to enjoy happiness without a fruition of God, so it is impossible to enjoy Him without an assimilation and conformity of our natures to Him in a way of true goodness and godlike perfection. It is a common maxim of Socrates that "it is not lawful for any impure nature to touch pure divinity." For we cannot enjoy God by any external conjunction with Him: divine fruition is not by a mere kind of apposition or contiguity of our natures with the divine, but it is an internal union, whereby a divine spirit, informing our souls, sends the strength of a divine life through them; and as this is more strong and active, so is happiness itself more energetical within us. It must be some divine efflux running quite through our souls, awakening and exalting all the vital powers of them into an active sympathy with some absolute good, that renders us completely blessed. It is not to sit gazing on a deity by some thin speculations; but it is an inward feeling and sensation of this mighty goodness displaying itself

within us, melting our fierce and furious natures, that would fain be something in contradiction to God, into a universal compliance with itself, and wrapping up our amorous minds wholly into itself, whereby God comes to be all in all to us. And therefore, so long as our wills and affections endeavour to fix upon any thing but God and true goodness, we do indeed but anxiously endeavour to wring happiness out of something that will yield no more than a flinty rock to all our pressing and forcing. The more we endeavour to force our affections to stay and rest themselves upon any finite thing, the more violently will they recoil back again upon us. It is only a true sense and relish of God, that can tame and master that rage of our insatiable and restless desires, which is still forcing us out of ourselves to seek some perfect good—that which, from a latent sense of our own souls, we feel ourselves to want.

The foundation of heaven and hell is laid in men's own souls, in an ardent and vehement appetite after happiness, which can neither attain to it, nor finally miss it and all appearances of it, without a quick and piercing sense. Our souls are not like so many lumps of matter dead and senseless to a true living happiness; they are not like those dull clods of earth which discern not the good or ill savour of those plants that grow upon them. Gain and loss are very sensibly felt by greedy minds. The soul of man was made with such a large capacity as it has, that so it might be better fitted to entertain a full and liberal happiness; that the Divine love and goodness might more freely spread itself in it, and unite it to itself. And, accordingly, when it misseth God, it must feel so much the more the fury and pangs of misery, and find a severe Nemesis arising out of its guilty conscience, which, like a fiery scorpion, will fasten its stings within it. And thus as heaven, love, joy, peace, serenity, and all that which happiness is, buds and blossoms out in holy and godlike spirits; so also hell and misery will perpetually spring out of impure minds, distracted with envy, malice, ambition, self-will, or any inordinate loves to any particular thing. (pp. 150-2.)

Fourthly, Smith concludes that in this world the scope of divine justice is " nothing else but to assert and establish eternal law and right, and to preserve the integrity thereof." (p. 154.) Hitting at current Calvinistic and puritanical views of God, he points out that a good ruler does not make laws in order to ensnare his subjects. " Justice is the justice of goodness, and so

cannot delight to punish . . . True justice never supplants any that itself may appear more glorious in their ruin." (p. 155.)

In his fifth and final conclusion Smith holds that "God Himself, from whom all law takes its rise and emanation, is not *exlex*, and without all law, nor, in a sober sense, above it." (p. 156.) By this he means that God is not necessitated to make us, but having determined upon creation, "He could neither make us sinful, seeing He had no idea nor shadow of evil within Himself." God does not, nor could He, make us so that we inevitably work our own ruin and proceed to eternal misery. "God does not make creatures, for the mere sport of His Almighty arm, to raise and ruin, and toss up and down, at mere pleasure." (p. 157.)

Having so pure and lofty a notion of God's nature and of His relation to men, Smith expectedly has a correspondingly high doctrine of the character and value of religion. In his discourse on "The Excellency and Nobleness of True Religion," he finds excellence and nobility in the rise and origin of religion, in its nature and essence, in its properties and operations, in its progress, and in its term and end. Throughout the tract Smith has many fine thoughts and expresses them happily as he considers these five points.

Religion is excellent and noble because it comes from God, and this in a twofold way, from His immutable nature and from His will. From God's immutable nature come "all those eternal rules of truth and goodness" which "we may call the truths of natural inscription; understanding, hereby, either those fundamental principles of truth which reason, by a naked intuition, may behold in God, or those necessary corollaries and deductions that may be drawn from thence. I cannot think it as proper to say, that God ought infinitely to be loved because He commands it, as because He is, indeed, an infinite and unchangeable goodness." (pp. 391-2.) Since God has "stamped a copy of His own archetypal loveliness upon the soul," man has only to look

within Himself to see there God's glory and thus "beget within himself the most free and generous motions of love to God. Reason in man being *lumen de lumine*—a light flowing from the Fountain and Father of lights—and being, as Cicero phraseth it, *participata similitudo rationis aeternae*:[10] (as the law of nature—the *νόμος γραπτός*—the law written in man's heart is *participatio legis aeternae in rationali creatura*[11])."

Smith takes note of one of the consequences of man's first disobedience and fall: ". . . the inward virtue and vigour of reason is much abated . . . those principles of divine truth, which were first engraven upon man's heart with the finger of God are now, as the characters of some ancient monuments, less clear and legible than at first." As a consequence, God has of His own free will revealed Himself to man. "But God, out of the infinite riches of His compassions towards mankind, is pleased to unbosom His secrets, and most clearly to manifest 'the way into the holiest of all,' and 'bring to light life and immortality,' and, in these last ages, to send His Son, who lay in His bosom from all eternity, to teach us His will, and declare His mind to us." In addition to "this outward revelation," God also can and does manifest Himself to men by "an inward impression," for, as Smith states, "He that made our souls in His own image and likeness, can easily find a way into them." (pp. 393-4.)

So also are the nobility and the excellence of true religion found in its nature and properties. A good man, who is actuated by religion, "lives above the world and all mundane delights and excellences." He "lives in converse with his own reason" and "above himself, and is raised to an intimate converse with the divinity." The properties and effects of true religion are seven in number.

[10] Again to be ascribed to Aquinas, *Summa Theologica*, I, Q. LXXXIV, art. 5, c.

[11] *Summa Theologica*, I-II, Q. XCI, 2, c.

1. That it widens and enlarges all the faculties of the soul, and begets a true ingenuity, liberty, and amplitude, the most free and generous spirit, in the minds of good men. (p. 403.)

2. That it restores a good man to a just power and dominion over himself, and his own will, enables him to overcome himself, his own self-will and passions, and to command himself and all his powers for God. (p. 407.)

3. That it directs and enables a man to propound to himself the best end and scope of life, viz. the glory of God, the highest Being, and his own assimilation, or becoming like unto God. (p. 413-4.)

4. That it begets the greatest serenity, constancy, and composedness of mind, and brings the truest contentment, the most satisfying joy and pleasure, the purest and most divine sweetness and pleasure to the spirits of good men. (p. 421.)

5. That it advanceth the soul to a holy boldness and humble familiarity with God, as also a well-grounded hope, and comfortable confidence, concerning the love of God toward it, and its own salvation. (p. 432.)

6. That it spiritualizes material things, and so carries up the souls of good men from earthly things to things divine, from this sensible world to the intellectual. (p. 438.)

7. That it raiseth the minds of good men to a due observance of, and attendance upon, Divine Providence, and enables them to serve the will of God, and to acquiesce in it. (p. 443.)

There are two great errors with regard to God, superstition and atheism. The main causes of superstition are common misconceptions of a deity, together with men's sense of their own guilt, an inability to explain terrifying effects in nature, and apparitions, spectres, and ghosts. Superstition itself is "Such an apprehension of God in the thoughts of men, as renders Him grievous and burdensome to them, and so destroys all free and cheerful converse with Him; begetting, in the stead thereof, a forced and jejune devotion, void of inward life and love." (p. 37.) Smith's analysis of superstition is keen:

It imports "an overtimorous and dreadful apprehension of the Deity" . . . And therefore the true cause and rise of superstitution is

indeed nothing else but a false opinion of the Deity, that renders him dreadful and terrible, as being rigorous and imperious; that which represents him as austere and apt to be angry, but yet impotent, and easy to be appeased again by some flattering devotions, especially if performed with sanctimonious shows, and a solemn sadness of mind. And I wish that that picture of God which some Christians have drawn of Him, wherein sourness and arbitrariness appear so much, doth not too much resemble it. (p. 26.)

Contrary to these superstitious notions of the nature of God, Smith wishes that men's notions of Him "should be such as might ennoble our spirits and not debase them. A right knowledge of God would beget a freedom and liberty of soul within us, and not servility . . . our thoughts of a Deity should breed in us hopes of virtue, and not gender to a spirit of bondage." (p. 28.)

Superstition and atheism are so much alike that they may be said to have "the same father." "'Superstition could be well content, there were no God to trouble or disquiet it, and atheism thinks there is none' . . . Atheism could never have so easily crept into the world, had not superstition made way, and opened a back-door for it: it could not so easily have banished the belief of a Deity, had not that first accused and condemned it as destructive to the peace of mankind; and therefore it hath always justified and defended itself by superstition." (pp. 41-2.) Since superstition begets atheism, Smith hopes that "some of our opinions in religion in these days may not have the same evil influences as the notorious Gentile superstition of old had." (p. 51.)

Comparing superstition and atheism, Smith concludes first, "that howsoever superstition be never so unlovely a thing, yet it is more tolerable than atheism," and secondly, "that atheism itself is a most ignoble and uncomfortable thing." Atheism, offering physical pleasures only, is "nothing else but a *dehonestamentum humani generis*, that casts as great a scorn and reproach upon the nature of mankind as may be, and sinks it into

the deepest abyss of baseness." (pp. 51-52.) If bodily pleasure is man's highest happiness, he is far worse off than brute beasts. If God does not exist, it is the greatest misfortune for man to be born into this world.

In his attitude towards superstitious beliefs and practices Smith's superiority to his age and school is made most evident in "A Christian's Conflicts and Conquests." "This discourse," Worthington states in his preface, "was delivered in public at Huntingdon, where one of Queen's College is every year, on March 25th, to preach a sermon against witchcraft, diabolical contracts, etc." There is the very greatest contrast between the reason and restraint with which Smith wrote and the wild superstition of Henry More.[12]

A reading of John Smith's surviving work shows him to be a man of wide erudition, of no little intellectual power, of genuine spiritual insight, of sincerity of thought and intensity of feeling, and of strength and originality as a writer of English prose. His thought derives from Sacred Scripture, from Plato and the Platonists, from Aristotle, from Plotinus and Proclus and the Neo-Platonists, from St. Augustine, from the schoolmen, and from the Christian mystics. In short, he belongs to the great tradition and in his way he represents the *philosophia perennis*. His inspiration and his inclination are shown by the countless authors that he quotes. He cites not only Plato, Plotinus, Proclus, and Augustine, but a host of others: Heraclitus, Empedocles, Aristotle, Porphyry, Plutarch, Cicero, Longinus, Clement of Alexandria, Pseudo-Dionysius, Boethius, St. Thomas Aquinas, Moses Maimonides, and various rabbinical writers.

Among modern writers he quotes Bacon and Descartes, who is referred to in the tract on immortality as "a late sagacious philosopher." Worthington in his preface refers to two of Smith's fellow Cambridge Platonists. Henry More is "one

[12] Cf. Henry More, *An Antidote against Atheism*. London, 1652; *Immortality of the Soul*. London, 1659; and *Divine Dialogues*. London, 1668.

whom our author highly esteemed," and Ralph Cudworth is one " for whom the author had always a great affection and respect." The quality of Smith's mind is revealed as well by the philosophers whom he rejects and attacks. These are especially Epicurus and Lucretius and those who follow them. Among these last, we may say, Smith saw a growing number of contemporary materialists and atheists, although he did not live long enough to see the publication of Thomas Hobbes's *Leviathan.*

Being a genuine mystic Smith cannot condone the Calvinistic and puritanical theory of God and practice of religion. He opposes the doctrines that would make God a harsh and arbitrary tyrant, who establishes human nature only that it may fall into ruin, who delights in punishing men, and who inspires fear but not love. He attacks as well the deistic doctrine—an ancient error that had revived and was making new gains in his own century—that God is indifferent to His creation. He is opposed to the great errors and evils of superstition, but he is still more opposed to the far grosser errors and the far more pernicious evils of a denial that God exists.

Such things as deism, materialism, hedonism, and atheism are rejected by Smith, both as a rational philosopher and as a Christian mystic. His is a genuine mysticism, yet his endowments of mind and heart are not such as to gain him a high place among the mystics. Nor does he give evidence of any such deep mystical experience as would enable him to write in a more original and personal way than he does. Comparison need only be made between Smith's discourses and the work of the great sixteenth- and seventeenth-century mystics to perceive this. Compared to St. Teresa of Avila, St. John of the Cross, and St. Francis de Sales, John Smith, the best of the Cambridge Platonists, shows himself to be a learner and apprentice of mysticism rather than a master and teacher.

The absence from Smith's work of emphasis upon particular doctrines, whether of the Christian tradition or of his own

variety of Protestantism, is significant. He died young and before covering all the work that he must have had in view.[13] Moreover, as has been already noted, his published volume does not contain all that he actually wrote. Hence it may well be that Smith was more interested in particular doctrines and articles of faith than his works indicate. Nevertheless, the fact remains that in these discourses his emphasis is upon conduct rather than upon belief, and upon practice rather than upon principles. His concern is with the effects of religion rather than with the means that religion offers to produce those effects. Smith's appeal is a reasoned appeal, but it is an appeal to the emotions and will rather than to the intellect.

In itself this concern on Smith's part for " the excellency and nobleness of true religion " is an evidence of how far he had risen above both the hatefulness and brutality of his age and the bigotry and extravagance of his school. He pleads for a conduct of human life that can come only from religion. Implicitly at least, he teaches that this high religious life, with all its attendant joy of heart, cannot come from the factious bickering and the narrow sectarian spirit that prevailed in his time. In Smith this lack of concern for certain dogmas of his age and community is not a renunciation and denunciation of all dogma in religion. That was to come later. It is important to note that the modern rejection of all doctrine has likewise meant the destruction of that warmth and joy in religion which Smith sought to inculcate.

Smith deserves a place in the history of English prose, as he does in the history of English religious thought. He lived and wrote in a time when English writing was more apt to be heavy and turgid than otherwise, and his own style is not free from these faults. Yet he had his own distinctive way of writing and

[13] In an advertisement that he prefixed to the discourse " On Legal and Evangelical Righteousness," Worthington states that illness and death prevented Smith from writing on " those principles of revealed truth which tend most of all to advance and cherish true and real piety."

he was able to infuse lightness and warmth into his treatment of difficult subjects. He always writes clearly, and frequently with fire and force. Ever and again the reader is struck by the vivid phrases and figures that light up the subject. Thus Smith speaks of " the vast wilderness of this world," of " our fierce and furious natures," of " a vigorous and masculine delight and joy," of " the protoplastic virtue of our being," of " a democracy of wild lusts and passions," of " our thin speculations," of " peccant humours," and of our will's " beloved prey."

There is an epigrammatic quality to Smith's writing that is worth further noting and illustrating, although some of it is apparent in passages already quoted. " God," he says, " is the first mind and the first good." " God is not a mere empty name or title, but that self-sufficient good which brings along with it that rest and peace." " Wherever we find true beauty, love, and goodness, we may say, Here or there is God." God's " honour is His love and goodness in paraphrase." " God is not better defined to us by our understandings than by our wills and affections." " And thus indeed when men most of all flee from God, they still seek after Him."

Of reward and punishment, Smith writes: " Hell is rather a nature than a place; and heaven cannot be so truly defined by any thing without us, as by something that is within us." " The foundation of heaven and hell is laid in men's own souls." " Eternal death is begotten and brought forth out of the womb of lust, and is little else but sin consummated, and in its full growth, as St. James intimates." " Every man's hell arises from the bottom of his own soul." " Hell is not so much induced, as educed out of man's filthy lusts and passions." " Corrupt minds do nothing else but fashion out a God and a devil, a heaven and a hell, to themselves, out of the power of their own fancies." [14]

[14] It is interesting to see how the Christian doctrine of hell can be emptied of its meaning. While hell is a real place of " everlasting fire

Of good men and bad he writes: "The more we endeavour to extract an autarchy out of our own souls, the more we torment them, and force them to feel and sensate their own pinching poverty." "Happiness is that pearl of price which all adventure for, though few find it." "Some men have too bad hearts to have good heads; they cannot be good at theory who have been so bad at the practice." "They are not always the best men that blot most paper." "Certainly, a man may as well read the Scriptures as study a piece of Aristotle, or of natural philosophy, or mathematics." "We never so truly hate sin, as when we hate it for its own ugliness and deformity; as we never love God so truly, as when we love Him for His own beauty and

which was prepared for the devil and his angels" (Matthew, XXV, 42), the greatest suffering endured by the lost is that issuing from their own deliberate and self-willed separation from God and from their acceptance of evil. The torment of hell is in men's souls and it is there by their own decision and activity. Yet though hell is a punishment for sins in this world, it is itself a future, not a present state, and an eternal, not a temporal torment. The following may be compared with Smith's statement of the doctrine:

> Hell hath no limits, nor is circumscribed
> In one self-place; for where we are is Hell,
> And where Hell is, there must we ever be.
>
> Marlowe, *Dr. Faustus.*

The heart of man is the place the Devil dwells in: I feel sometimes a hell within myself.

Sir Thomas Browne, *Religio Medici*, I, LI.

> The mind is its own place, and in itself
> Can make a heaven of hell, a hell of heaven.
>
> Milton, *Paradise Lost*, I, 253-4.

> Which way I fly is hell; myself am hell.
>
> *Ibid.*, IV, 75.

Instead of fabling a future hell as an equivalent of sin, I have proved that where guilt exists in the world, there is already something resembling hell.

—Schopenhauer, *The Misery of Life.*

The hell to be endured hereafter, of which theology tells, is no worse than the hell we make for ourselves in this world by habitually fashioning our characters in the wrong way.

William James, *Psychology*, Chapter X.

excellency." And of religion and its effects: "A good man finds not his religion without him, but as a living principle within him." "Religion is no sullen stoicism or oppressing melancholy." "Religion is no such austere, sour, and rigid thing as to affright men away from it." "But true religion is indeed no art, but an inward nature that contains all the laws and measures of its motion within itself." "The more this sensual, brutish, and self-central life thrives and Divine faith languisheth; and the more that decays, and all self-feeling, self-love, and self-sufficiency pine away, the more is true faith fed and nourished, the more vigorous it grows."

From such instances it may be seen that in his style as a philosophical and theological writer Smith is one of those who brought about a freer and more persuasive way of treating their subjects. As a preacher he may be taken as a pioneer in that aphoristic style which has had so many practicioners in the nineteenth century and in our own. In his way of writing as well as in his way of thinking there is much in this Cambridge Platonist that has characterized later thought and expression. How he would have developed with a longer life and in a more favorable environment may be conjectured from what he has left behind him. The promise of greater things that John Smith gave was prevented from fulfillment by sickness and early death, but what he accomplished as a thinker and writer assures him of a permanent place in the record of modern English thought.

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THE PHILOSOPHY OF LAW FROM ST. AUGUSTINE TO ST. THOMAS AQUINAS

PERHAPS the most fundamental and far reaching contribution of St. Augustine to legal philosophy [1] and its further development is to be seen in his basic reformulation of the impersonal supreme cosmic reason proposed by the Stoics; [2] in his successful undertaking to ground this universal order or régime exclusively in the *personal* will and intellect of God. Thus he states that "the eternal law (*les aeterna*) is the divine reason as well as the will of God which commands us to maintain (observe) the natural order of things and forbids us to disturb it." [3] This *lex aeterna*, which at the same time constitutes the *ratio aeterna* of all things created, resides in everything that exists or moves. Hence the strictly personal will and intellect of God, which denotes the ultimate and abiding rationale as well as the lasting order of all things, is at once the proper end of everything.[4] The *lex naturalis* (*moralis*) of St. Augustine is essentially man's conscious participation in the *lex aeterna*, in short, the subjective aspect of the objective *lex*

[1] As to the philosophy of law of St. Augustine, see, by the present writer, "The Philosophy of Law of St. Augustine," in: *Philosophical Review* LII, 2 (1944), p. 195 ff.

[2] With the Stoics the World-Reason is also the supreme deity. Hence man's submission to the cosmic order, to the *lex naturalis* is tantamount to his obedience to the Godhead and submission to the divine law as well as to the divinely ordained cosmic purpose. In this manner the Stoic *lex naturalis* or *lex naturae* turns into the *lex divina* or *lex aeterna*, an equivalence which had tremendous consequences for the subsequent development of legal philosophy.

[3] *Contra Faustum* XXII, 27; Compare also *Psalm* 36, serm. 3: "The will of God itself is the law of God.", and, *De Diversis Quaestionibus*, quaest. 79, 1: "For the divine wisdom is the universal law."; *ibid.*, quaest. 53, 2: "(The *lex aeterna* is) . . . that ineradicable and sublime administration of all things which proceeds from the Divine Providence."; *De Libero Arbitrio* I, 6, 15.

[4] *De Libero Arbitrio* I, 5;

aeterna. Of the *lex aeterna,* the absolute administration of everything, there is in, or transcribed upon, the soul of man the *lex naturalis,*[5] " in order that all men in this way of life and within the scheme of secular morals may serve as images of such administration of everything." [6] Our awareness of the existence of natural justice and natural law and right comes to us through the natural light of the human reason or intellect while through our moral conscience we are forever reminded [7] of the *lex aeterna* as being immanent in the *lex naturalis* and natural justice.[8]

The specific content of St. Augustine's principle of natural law and right, that is, of his *lex naturalis* is to be discovered in the divinely ordained ontological order. It is the observance of this infinite natural and moral order which forms the true substance of the Augustinian concept of law and right, justice and morality.[9] Despite man's having the basic principles of natural law and justice imprinted on his soul, and despite his ability to draw correct conclusions from these principles as to the moral appropriateness of his individual actions, St. Augustine stresses the necessity of temporal or human (positive) laws. Since in the course of events these principles become blurred in the mind of man through his evil inclination, sinfulness and vice, their reconfirmation stands in need of a human law. Laws had to be given to man by man in order that what had become obscured might again become manifest. Since man is what he is, the implanted *lex naturalis* does not necessarily make such human laws superfluous. Quite the contrary, the *lex naturalis* itself needs the human law in order to actualize itself in a world

[5] Compare also *Epistola* 157, 3, 15 (in: *P. L.*, vol. 44).

[6] *De Diversis Quaestionibus,* quaest. 53, 2.

[7] *De Trinitate* XIV, 15; also *Epistola* 157, 18; *Confessiones* II, 4.

[8] *De Trinitate* XII, 15;—The two basic principles of St. Augustine's *lex naturalis* are: Do nothing unto another you would not have done unto yourself (*Epistola* 157, 3, 15; compare also *De Ordine* II, 2, 25; *Psalm* 118, serm. 25, 4); and the idea of a most perfect ontological order or orderliness (compare *De Libero Arbitrio* I, 6, 15; *Psalm* 145, 5).

[9] *De Trinitate* VIII, 9;

fraught with wickedness and corruption.[10] As to the relationship of the *lex naturalis* to human laws, St. Augustine insists that in all secular matters nothing can be called just and righteous which has not derived its 'authority' from the *lex naturalis, viz.*, the *lex aeterna.*[11] Only when in full accordance with the dictates of the eternal and immutable order of things, with the unchangeable natural principles of law, right, and justice, may the secular lawgiver properly determine what for the time being ought to be the law in secular matters.[12] The human laws, however, cannot prohibit or even control everything that is prohibited or controlled by the *lex aeterna* and, hence, by the *lex naturalis.*[13] For the human laws, which concern themselves exclusively with the proper adjustment of man's secular affairs,[14] deal primarily with the mere prevention of the worst excesses of human wickedness and not, as it were, with the promotion of virtue and the virtuous life.[15]

These basic and authoritative pronouncements of St. Augustine concerning the foundation and essence of law, right, and justice became the guiding maxims of the whole of lego-philosophical thought and argument of the following centuries. They are, in fact, the very ideas which shaped the essential features of the philosophy of law of St. Thomas Aquinas,[16] the first truly systematic and comprehensive treatment of the philosophical problems underlying law and justice undertaken by the Middle Ages.[17] The dependence of St. Thomas Aquinas on

[10] *De Vera Religione* XXXI, 58.

[11] Compare, for instance, *De Libero Arbitrio* I, 6, 15; *De Civitate Dei* XIX, 21; *Epistola* 105, 2, 27 (in: *P. L.*, vol. 44).

[12] *De Vera Religione* XXXI, 58.

[13] *De Civitate Dei* XV, 16; *De Libero Arbitrio* I, 5, 13, I, 5, 31.

[14] *De Civitate Dei* XV, 16.

[15] Compare, for instance, *De Doctrina Christiana* II, 25; II, 39; *De Civitate Dei* XIX, 21; *Epistola* 153, 6, 16; 153, 6, 26.

[16] In: *Summa Theologica* I, II, quaest. 90-97; *ibid.*, II, II, quaest. 80; quaest. 57-58; quaest. 60; quaest. 120.

[17] The high esteem in which St. Thomas' philosophy of law has been held even in modern times by non-Catholic scholars might be gathered from

St. Augustine in many an essential issue concerning the nature of law and justice is clearly indicated and, as a matter of fact, fully admitted by the former.[18] The same holds true to an even greater degree as regards the theologians and philosophers preceding St. Thomas Aquinas. Our exact knowledge of the specific lego-philosophical tradition of the intervening eight centuries, however, is still less than scanty. From the point of view of our present information about the history of juris-

Jhering, R., *Der Zweck im Recht*, 3d edit., vol. II, p. 161 ff.: "This great mind correctly understood the realistic, practical, and historical factors of moral life. . . . In amazement I ask myself how it is possible that such truths, once they were uttered, could be forgotten so completely by our Protestant savants? What false roads would have been spared, had they taken them to heart. For my part, I would probably not have written my book (*Der Zweck im Recht*—note by the present author), had I known them. For the basic ideas I occupied myself with are to be found in that gigantic thinker in perfect clearness and most pregnant formulation."

Kohler, J., in his *Lehrbuch der Rechtsphilosophie*, 3d edit., p. 38, instances that "it is the immortal achievement of St. Thomas Aquinas . . . to have formulated natural law in a manner which is closest to truth." *Ibid.*, p. 43 ff., after referring to the secular natural law thinkers following in the wake of Hugo Grotius, states: "How much wiser and profounder were the thoughts of St. Thomas. . . . The substance and life which we find in the scholastic thinkers has been replaced by stagnation and shallow artificiality in the writings of the post-Grotian jurists." The same, in: Holtzendorf-Kohler, *Enzyklopaedie der Rechtswissenschaft* 7th edit., vol. I, p. 3, insists that "scholastic thought, particularly St. Thomas, . . . constitute a culmination of (lego-philosophical) discussion compared to which the natural law theories preceding Hegel are but regression." Compare also Gierke, O., *Das Deutsche Genossenschaftsrecht*, vol. III, p. 610; Jourdain, C., *La Philosophie de St. Thomas d'Aquin*, vol. I, p. 364, referring to the *Summa Theologica* I, II, quaest. 90-97, instances: "It possesses to a very high degree the science of the principles of law and right, something which is even superior to mere erudition. That part of his works which we are going to analyze presently is perhaps the most excellent introduction to the study of law which was ever written. Even today, it might be offered with confidence to the jurisconsult or lawyer as a topic of meditation."

[18] Compare *Summa Theologica* I, II, quaest. 91, art. 1; art. 2; art. 3; art 4; art. 5; quaest. 92, art. 1; art. 2; quaest. 93, art. 1; art. 2; art. 3; art. 4; art. 6; quaest. 94, art. 1; art. 6; quaest. 95, art. 2; quaest. 95, art. 1; art. 2; art. 4; art. 6; quaest 97, art. 1; art. 3; *ibid.*, II, II, quaest. 57, art. 1; quaest. 58, art. 1; art. 2; art. 8; art. 11; quaest. 59, art. 1.

prudential thought, this particular period certainly deserves the epithet of the ' dark ages.' [19]

Since the many theological and philosophical writings of St. Augustine constitute one of the main sources of Christian teachings before St. Thomas Aquinas, it is only natural that, in the main, he should become the great authority in matters concerning law, right and justice. Besides St. Augustine we might also mention St. Ambrose of Milan—himself originally a jurist educated in Rome—whose *De Officiis Ministrorum* was widely known and had, indeed, a lasting influence upon subsequent legal and moral theories.[20] Also of no mean importance for the continuance of the Augustinian traditon was the *Liber Sententiarum ex Operibus S. Augustini Deliberaturum* of Prosper of Aquitania.[21] In this first known collection of Christian *sententia* we find a number of rather loosely connected eclectic restatements of some of St. Augustine's most important jurisprudential views. Besides these ecclesiastical authorities and

[19] The literary treatment of this particular period in the annals of jurisprudence has been attempted by Grabmann, M. ("Das Naturrecht der Scholastik von Gratian bis Thomas von Aquino," in: *Archiv für Rechts- und Wirtschaftsphilosophie*, vol. XVI (1922/23), p. 12 ff.), to whom the present writer is deeply indebted for much information on this subject. See also, in general, Grabmann, M., *Die Geschichte der Scholastischen Methode*, 2 vols.; Stokums, M., *Die Unveränderlichkeit des natürlichen Sittengesetzes in der Scholastischen Ethik*; Seydl, E., *Das Ewige Gesetz und seine Bedeutung für die physische und sittliche Weltordnung*; and the abundant literature on mediaeval moral, legal, social, and political thought found in Ueberweg-Heinze, *Grundriss der Geschichte der Philosophie*, vol. II (edit. by Geyer, G.), 11th edit. 1928.

[20] The *De Officiis Ministrorum*—written in 386—is closely modeled after Cicero's *De Officiis*, from which St. Ambrose borrowed not only the title as well as the general arrangement of his treatise, but also many details of his content. It constitutes an interesting blend of Christian and Stoic moral principles, although in some respects its spirit is actually reminiscent of ancient Hebrew wisdom. It marks perhaps one of the most effective steps in the reception of Stoic and Alexandrian-Hellenistic (Philo) ideas into Christian moral doctrine.

[21] Written around 450;—See *P. L.*, vol. 45 and 51;—About (Tiro) Prosper of Aquitania compare Valentin, L., *St. Prosper d'Aquitanie*; and Bardenhewer, O., *Geschichte der Altchristlichen Literatur*, vol. IV, p. 533 ff.

authors the impact of the recently edited *Digest* and *Institutes* of Emperor Justinian upon early mediaeval juristic thought cannot be discounted, particularly in matters concerning legal definitions, concepts, and conceptions. For instance, the well known definition of the Roman *ius naturale* and *ius gentium* as contrasted with the *ius civile, i. e.*, the dictum that the "*ius naturale est quod natura omnia animalia docuit*," [22] and that the "*ius gentium est quo gentes humanae utuntur*," [23] soon became, with certain modifications, part and parcel of Christian jurisprudence and its specific terminology, especially through the efforts of Isidore of Seville.[24] In his *Etymologiae* or *Origines*, which carries all the earmarks of a compilation of encyclopedic excerpts and which contributed so much to the transmitting of ancient thought and intellectual achievement to the Middle Ages,[25] Isidore defines the *ius naturale* as follows: "Natural law is a law common to all peoples (nations), and is held to be not something established by man himself, but

[22] *Digest* I, 1, 1 *De Justitia et Jure* 2; also *Institutes* I, 2 *De Jure Naturali, Gentium et Civili.*

[23] *Digest, l. c.*; *Institutes, l. c.*;—It is interesting to note that the Roman *ius gentium* is distinguished from the Roman *ius naturale* in that the latter applies to all living creatures, while the former constitutes something to be discovered in the reciprocal intercourse of all men or peoples (*Digest, l. c.*). Thus we read in the *Institutes* (*l. c.*) that the *ius gentium* is "that law which reason appoints for all mankind . . . because all peoples make use of it." Compare, in general, Gareis-Wenger, *Rechtsenzyklopädie und Methodologie*, 5th edit., p. 12 ff.

[24] Died in 636.

[25] This encyclopedic work of Isidore—20 volumes—which must be understood mainly as a laborious effort to transmit to posterity the whole body of theological and secular learning of the past, had a lasting and profound effect upon the intellectual life of the Middle Ages and the mediaeval mind in general. It became a leading 'text book authority' for the whole *secular* schooling system of the earlier Middle Ages, and has been referred to again and again by nearly all mediaeval scholars and theologians in their *sententiae*, glosses, *disputationes, summae, quodlibeta*, and *disquisitiones*.—Of similar importance are Isidore's *Libri Tres Sententiarum*, particularly book II and III, which together with the *Sententiae* of Prosper of Aquitania (see note 21 *supra*) and the *Liber Sententiarum* of Samuel Tajus of Saragossa were much used and imitated during the Middle Ages.

rather a common natural instinct; namely the union of man and wife, the having and upbringing of children, the common possession of and rights to all things, a common right to freedom as well as the right of acquiring all that which man may catch in the skies, on the earth, and in the seas. (Thereto belong) also the restitution of things or money deposited, and the right to repell force by force. Because the latter, although it may appear to be unjust, is never an act of injustice." [26]

The *Etymologiae* of Isidore and his views on law, right, and justice were used by, among others, Alcuin (730-804)—a man of great learning in his day—whose main contribution to the history of mediaeval speculation, like that of Isidore, consists in transmitting, compiling, and making excerpts from the works of other scholars and theologians. Thus his *De Rhetorica et Virtutibus*,[27] which is but an excerpt from Cicero's *De Inventione*,[28] reflects the famous Ciceronian statement [29] that justice is but a habit of the mind (*habitus animae*) which renders to every one his dignity. In this fashion Alcuin, and after him Hrabanus Maurus (776 or 784-856),[30] carried on the idea, also espoused by St. Augustine [31] and Isidore,[32] that justice and the end of law consist in that every one is permitted to hold his own,[33] a formula which, according to the predominant legal and

[26] *Isidori Hispalensis Episcopi Etymologiarum sive Originum Libri* XX, edit. Lindsay, W., book V, 4-6.

[27] See, *De Rhetorica et Virtutibus*, edit. Halm, C., in: *Rhet. Lat. Min.*, p. 525 ff.

[28] Cicero's *De Inventione* is also called *Rhetorica*.

[29] *Ibid.*, II, 160.

[30] His *De Institutione Clericorum* (edit. Knoepfler)—written in 819—is a compilation from the Church Fathers, particularly from St. Augustine's *De Doctrina Christiana*, the works of St. Gregory of Nyssa, and Isidore's *Etymologiae*. In its ecclectic manner this widely read work of Rhabanus also touches upon questions of law and justice. Likewise under the influence of Cicero's ideas on the nature of law, right, and justice is Servatus Lupus (died in 862). See *P. L.*, vol. 119, p. 431 ff.

[31] Compare *De Diversis Quaestionibus*, quaest. 31.

[32] *Etymologiae* V, 10.

[33] Besides being stated by Cicero this famous dictum found its authori-

lego-philosophical tradition both of antiquity and the Middle Ages, constitutes the cardinal principle of every legal order or administration of justice aiming at the harmonious preservation of the established social *status quo*.[34]

A distinct and original and, at the same time, systematic and self-contained lego-philosophical doctrine of any import which is worthy of a special investigation cannot be found in theological writings between Isidore of Seville and Gratian.[35] The few and dispersed short allusions to the nature of law and justice essentially move along lines authoritatively laid down by St. Augustine [36] in matters concerning natural moral law and

tative forensic spokesman in Ulpian (*Regularum Libri Septem* I, 10). It was later incorporated in the *Digest* (I, 1, 1, 2) and the *Institutes* I, 1, pr.: "Justice is the set and constant purpose which gives to every one his own."

[34] This Ciceronian tradition found renewed expression in William of Conches, who in his *Moralis Philosophia de Bono et Utile* relies heavily on Cicero's *De Officiis*, where the basic formula of all true justice is defined as that right which permits every one to hold his own. See Cicero, *De Officiis* II, 22, 78; I, 7.

[35] We possess, however, a number of collections of *canones*, papal encyclicals, and *decretales* which appeared after the death of Isidore. Among the most important of these collections are: (a) The *Collectio Dionysio-Hadriana*, orginally ascribed to Dionysius Exiguus, an otherwise unknown monk. This Dionysian collection was given to Emperor Charlemagne in 774 by the East Roman Emperor Hadrian I. (b) The *Collectio Hispana* (or *Isidoriana*) which originated in Spain during the ninth century. It was erroneously ascribed to Isidore of Seville. During the ninth century a forgery of this *Collectio Hispana* made its appearance in France (the so-called *Pscudo-Isidorian Decretales*). The author of this forgery is probably Levita who calls himself Isidore (Mercator).

There were other *collectiones* of *decretales* made after the ninth century which lack, however, system and order. Their historical importance rests on the fact that they became the materials from which Gratian drew for his *Decretum*. The most important of these collections are: (a) The *Collectio Anselmo Dedicata*, which originated in Italy towards the end of the ninth century. (b) The *Libri Duo de Synodalibus Causis*, written by the Abbot Regino of Prüm during the early part of the tenth century. (c) The *Decretum* of Bishop Burckardt of Worms, written during the early part of the eleventh century. (d) The *Decretum* of Bishop Ivo of Chartres, written during the early part of the twelfth century.

[36] We know, however, of a host of mediaeval 'publicists' before Gratian

morals in general.[37] The same adherence to the Augustinian tradition is to be found in the works of St. Anselm of Canterbury, who writes[38] that there are certain goods to which man aspires either as means to an end, or for their practical usefulness, or as ends in themselves, that is, for their intrinsic value. These goods are, however, only relative, and consequently presuppose something absolute, which, at the same time, constitutes their ultimate criterion and justification.[39] Applying this insight to the problem of law and justice he realizes the need for an abiding and unchangeable law—a *lex aeterna* and a *lex naturalis* which determine, within the total ontological situation, whatever is truly law, right, and just. Peter Abaelard, on the other hand, called the moral teachings of the Gospel an improve-

who dealt with political and politico-philosophical rather than legal or lego-philosophical questions. The more important 'publicists' of this period are: Peter Damian (died 1072), in: *P. L.*, vol. 145; Pope Gregory VII (died 1085), in: *P. L.*, vol. 148; Emperor Henry IV (died in 1106), in: *Monumenta Germaniae, Leges*, vol. II, p. 14 ff.; Cardinal Petrus Crassus, in: *Libello de Lite, Monumenta Germaniae*, vol. I, p. 432 ff.; Wenrich of Trier, in: *ibid.*, vol. I, p. 280 ff.; Manigold of Lautenbach (died after 1103), in: *ibid., vol.* I, p. 301 ff.; Bishop Wido of Ferrara, in: *ibid.*, vol. I, p. 529 ff.; Bishop Welram of Naumburg, in: *ibid.*, vol. II, p. 285 ff.; Cardinal Deusdedit, in: *ibid.*, vol. II, p. 292 ff.; Abbot Goffredus, in: *P. L.*, vol. 157; St. Anselm of Canterbury, in; *P. L.*, vol. 158; 159; Bishop Ivo of Chartres, in: *ibid.*, vol. 161; 162; Sigebert of Gembleaux, in: *Libello de Lite, Monumenta Germaniae*, vol. II, p. 426 ff.; Hugo of Flores, in: *ibid.*, vol. II, p. 495 ff.; Honorius Augustodunensis, in: *ibid.*, vol. III, p. 29 ff.; and *P. L.*, vol. 182, p. 67 ff.; vol. 186, p. 727 ff.; Gerhohus Reicherspergensis, in: *Libello de Lite, Monumenta Germaniae*, vol. III, p. 131 ff.

[37] We should mention here Manigold of Lautenbach, who in his *Opusculum contra Wolfelmum* (in: *P. L.*, vol. 155, c. 22, 170 B ff.; 152 C ff.) also deals with the essence of natural (moral) law. It should be noted that his treatment of the subject goes back to Macrobius' *Commentarius in Somnium Scipionis* I, 8 (edit. *Eysscnhard*, p. 517 ff.), and hence to Plotinus (*Enneid* I, 2). As to Manigold's compact theory concerning the problem and origin of sovereignty, see *l. c.*, c. 29 ff.;—See also Lanfranc, himself originally a jurist trained in Bologna, in: *P. L.*, vol. 150, 1 ff.

[38] In this St. Anselm is under the influence of St. Augustine's *De Libero Arbitrio* II, 1, 3 ff.; *De Vera Religione* XXX, 55 ff.; *De Trinitate* VIII, 3, 4 ff.;—Compare also Boethius, *De Consolatione Philosophiae* V, 10;

[39] *Monologium* I, 144 C ff.

ment over the natural moral law,[40] that is, over the Roman Law definition of the *ius naturale*, which is what nature has taught all living creatures.[41] According to Abaelard,[42] whose significant contribution to ethical speculation consists in pointing out the decisive rôle of the moral intent (*intentio*), the natural moral law as enunciated by the Scriptures can never be disproved on rational grounds; for it remains valid and immutable for all time and places.[43] His emphasis upon the moral intent [44] and the individual moral conscience [45] of the acting and willing human being seems to create an irreducible antinomy between the subjectivity of one's personal moral convictions and the objectivity of the fundamental moral or legal norms, the *lex naturalis*. In order to overcome the apparent impasse he points out, however, that true righteousness and justice—moral as well as legal—consist in the harmonious and determining coincidence of man's moral conscience or intent with the objective and absolute dictates of right action and volition—in man's conscious and free willing submission to the norms of the *lex naturalis* which divulge themselves to the scrutiny of reason properly employed.[46] John of Salisbury's *Policratus*, written between 1159 and 1161, is not properly a legal or lego-philosophical essay, but rather a political treatise, the first great work on political philosophy produced by the Middle Ages. This treatise sponsors, on an ethico-political basis, a return to the type

[40] *Theologia Christiana* II, 1179 D: "Si enim diligenter moralia evangelii praecepta consideremus, nihil ea aliud quam reformationem legis naturalis inveniemus, quam secutos esse philosophos constat."

[41] *Institutes* I, 2; *Digest* I, 1, 1 2, 6.

[42] Abaelard's method of deciding an argument by weighing all the authorities *pro* and *contra* has greatly influenced the pleading of canon and civil law cases. Compare, for instance, Denifle, H., in: *Archiv für Literatur und Kirchengeschichte des Mittelalters*, vol. I, p. 620.

[43] *Theologia Christiana* II, 1179 D.

[44] *P. L.*, vol. 178, 658 B.

[45] *Ibid.*, 653 B.

[46] *Ibid.*, 653 B; 657 D; Compare Cousin, V, *Petri Abaelardi Opera*, vol. II, p. 615, 620.

of socio-political thinking and social justice promoted by the ethical teachings of the Church. It had a great and lasting influence on subsequent writers dealing with the problem of the 'common good,' and has been used by, among others, Vincent of Beauvais and St. Thomas Aquinas.

The definition of the *ius naturale* or *lex naturalis* in Isidore's *Etymologiae* was taken over by Gratian in his *Decretum*,[47] who instances that "natural law, right, and justice consists in whatever is contained in the law and the Gospel." Through this natural law every one is held "to do unto another what he would have done unto himself"; and forbidden "to do unto another what he would not have done unto himself."[48] In one essential respect, however, Gratian does not follow the Augustinian tradition; namely, in his failure to distinguish clearly between the *lex aeterna* or *lex divina* and the *lex naturalis*. Hence he states that "*omne quod fas est, nomine divinae vel naturalis legis accipiatur.*"[49]

Of even greater importance for the lego-philosophical tradition of the twelfth century is Rufinus, the first and perhaps most talented and influential commentating summist of Gratian's *Decretum*.[50] Rufinus's definition of natural law,[51] which is

[47] The *Decretum Gratiani*, also called *Concordantia Discordantium Canonum*, was compiled about 1140 by the monk Gratian, who taught canon law at the University of Bologna. As to Gratian's dependence on Isidore of Seville, see, for instance, *Decretum*, canon I, *De jure naturae et humanae constitutionis*, dist. 1: "Est et alia divisio juris, ut in eodem libro testatur Isidorus . . ." Compare also his reply to the query, "Quid sit ius naturale"? (*Ibid.*)

[48] *Ibid.*, in this Gratian follows St. Augustine. See, for instance, *Epistola* 153, 3, 15 (in: *P. L.*, vol. 44)—Compare St. Thomas Aquinas, *Summa Theologica* I, II, quaest. 94, art. 1 (obj. 1 and reply).

[49] *Ibid.*,—The term '*fas*' is used here as the opposite of human or positive law. As to the original meaning of the word '*fas*,' see Cicero, *Ad Atticum* I, 16, 6; *Contra Verrem* II, 5, 13; *Livy* I, 32, 6

[50] *Summa Decretorum Magistri Rufini*, edit. by Singer, H.;—As to his influence, see, for instance, Kuhlmann, B., *Der Gesetzesbegriff des hl. Thomas von Aquino im Lichte des Rechtsstudiums seiner Zeit*, intr. p. 127 ff.

[51] See Singer, H., *l. c.*, p. 6 ff.

much more precise than that of Gratian, sets out to analyze the Roman Law tradition—*legistica traditio*—of the *ius naturale*, the well known and often recited "*quod natura omnia animalia docuit.*" In his dissatisfaction with this rather general and vague statement he essays to coin an entirely novel formula restricting, as did the Roman *ius gentium*, the term natural law to the human species, that is, to the rational and moral creature. "*Est naturale ius vis quaedam humanae creaturae a natura insita ad faciendum bonum cavendum contrarium.*" [52] In its essence natural law consists of three basic elements or functions: *mandata*, *prohibitiones*, and *demonstrationes*—commands, interdictions, and practical counsels or instructions. It commands what is useful to man, prohibits what may harm him, and counsels *quod convenit.*[53] Through sin and human wickedness man had lost the sense for law, right, and justice to such a degree that finally he considered everything permissible or, at least, excusable,[54] until the New Evangel restored the natural moral law to its full and original meaning. Since nothing could ever be added or subtracted from them, the fundamental commandments or interdictions of natural law can never be changed or modified, while the instructions or counsels of *quod convenit* do, and actually must, change as the situation changes.[55] Rufinus' views on natural law, particularly his subdivision of it into commandments, interdictions, and practical counsels, were

[52] This statement was taken over by St. Thomas Aquinas as the first principle of natural law. See *Summa Theologica* I, II, quaest. 94, art. 2: "This is the first precept of law, that the good is to be done, and evil to be avoided."

[53] Singer, H., *l. c.*, p. 7.

[54] St. Thomas Aquinas (in: *l. c.*, quaest. 91, art. 3), however, insists that the most general principles of natural law known to all men (the *primary* natural law) can never entirely be blotted out of the hearts of men.

[55] These *demonstrationes* of Rufinus become with St. Thomas Aquinas the *secondary* natural law. They are "conclusions following closely from the first principles" (*l. c.*, quaest. 94, art. 6), and as such are not valid for all times and places, but do, and must, change (*ibid.*, art. 5). For they are related to matters concerning human actions (*ibid.*, quaest. 91, art. 3; quaest. 94, art. 4).

adopted by Stephen of Tournai [56] and Johannes Teutonicus, who also elaborated on the several meanings of natural law.[57] The influence of the *Decretum Gratiani* on the *Libri Quattuor Sententiarum* of Peter Lombard especially on the third book, is considerable; it does not, however, occasion him to enlarge on the lego-philosophical views espoused by Gratian.[58] This fact is extremely important in view of the great authority Peter Lombard's *Sententiae* enjoyed during the Middle Ages.[59] Rufinus' distinction between *mandata*, *prohibitiones*, and *demonstrationes*, on the other hand, was extensively used by William of Auxerre, as shall be shown presently.[60]

During the earlier stages of the development of scholastic thought we encounter but few, and then merely occasional, references to lego-philosophical speculation, or, to be more exact, to the problems of natural law, which, with the mediaeval thinkers, stood for legal philosophy. Thus Anselm of Laon (died 1117), for instance, merely in passing mentions the *lex naturalis* and the *mandata naturalia* which originate with the

[56] *Summa Decreti Gratiani*, edit. Schulte, p. 7 ff.;—Stephen of Tournai died in 1203.

[57] *Glossa Ordinaria* (or *Apparatum*) to the *Decretum Gratiani* chap. VII, dist. 1.

[58] See *III. Sententiarum*, dist. 37, chap. 4 ff.

[59] The *Sententiae* of Peter Lombard, written between 1150 and 1152, made their influence felt for nearly 400 years. There exist many commentaries just outlining or abbreviating them. Thus with the *Sententiae* was initiated a new type of literature, the so-called *Commentarii in Sententiis*. The forerunner of Peter Lombard's *Sententiae* might be the *Summa Sententiarum* ascribed to Hugo of St. Victor. As to the influence of St. Augustine on Peter Lombard, see Grabmann, M., *Die Geschichte der Scholastischen Methode*, vol. II, p. 385 ff.; and Espenberger, J., "Die Philosophie des Petrus Lombardus und ihre Stellung im 12. Jahrhundert," in: *Beiträge zur Geschichte der Philosophie des Mittelalters*, vol. III, p. 5.

[60] This is not the place to investigate or discuss the various lego-philosophical views of the many commentators or glossators on the *Decretum Gratiani* or the *Liber Extra* (of Pope Gregory IX, edit. by Raimundus de Pennaforte 1234). Neither shall we endeavour to deal with the glossators or commentators on the *Corpus Iuris* of Justinian.

lex naturalis, as contrasted with the *mandata ad tempus ordinata* which originate with the positive law.[61] Also the many Parisian summists,[62] such as Martinus de Fugeriis, Peter of Capua, Martinus of Cremona, Praepositinus of Cremona, Simon of Tournai, Robert of Courçon, Petrus Cantor, Guido of Orchelles, Robert of Melun, Petrus Pictaviensis,[63] have neglected to deal more thoroughly with the problems of natural law or even to dedicate a single separate chapter or *quaestio* to the nature of natural law. A solitary exception in this regard is Stephen of Langton,[64] whose theological *Summa* [65] contains a rather brief but nevertheless coherent and distinct essay *De Jure Naturali* [66] which is entirely under the spell of St. Augustine, Isidore of Seville, and the tradition established by Gratian and Rufinus.

Lego-philosophical speculation among the theologians and philosophers preceding St. Thomas Aquinas assumes a novel aspect when it begins to transcend the limitations of a merely occasional treatment of the nature of law, right, and justice, and becomes a more integral and organic element of general theological and philosophical discussion. The main impetus for the new development must be sought for in a greater emphasis, first, upon the Augustinian *lex aeterna* and its all encompassing implications for a fundamental cosmological, ontological, theological, and moral outlook on total life; and, secondly, upon a limited employment and exploitation of some elements of Aristotelian philosophy and methodology.

[61] See Bliemetzrieder, F., "*Anselms von Laon systematische Sentenzen,*" in: Beiträge zur Geschichte der Philosophie des Mittelalters, vol. XVIII, no. 2 and 3, p. 4 ff.

[62] As to the meaning of the term *Summa,* see Robert of Melun (quoted in: Grabmann, M., *Die Geschichte der Scholastischen Methode,* vol. II, p. 23; 341: "Quid enim Summa est? Nonnisi singulorum brevis comprehensio").

[63] Compare Grabmann, M., *l. c.,* vol. II, p. 476 ff.; 328 ff.; 501 ff.; 494 ff.; 485 ff.

[64] Died in 1228.

[65] In: *Cod. Bibl. Nat. Lat.* 14 556 in Paris.

[66] *Fol.* 171r.

The first representative of this new development is William of Auxerre,[67] a theologian and scholar of no mean repute,[68] whose familiarity with some of Aristotle's writings is well attested.[69] His famous and frequently quoted and much relied upon *Summa Aurea*[70] contains a rather lengthy and thorough as well as scholarly discussion of the nature of natural law,[71] the *ius naturale*.[72] This *ius naturale*, which constitutes the "*origio et principium*" of all virtues and moral motivations, according to William of Auxerre, may be used in a larger and narrower sense. In its larger meaning it is "*quod natura docuit omnia animalia*"—the traditional Roman Law definition of the *ius naturale*—while in its narrower meaning it is that "which natural reason dictates to us to do without any deliberation or, at

[67] Also called Guilelmus Altissiodorensis; died between 1231 and 1237.

[68] He was, besides being the recipient of many scholarly honours, one of the outstanding members of the committee charged by Pope Gregory IX (in 1231) with the revision and expurgation of the *libri naturales* of Aristotle, which had been banned by the provincial council of Paris in 1210.

[69] In his *Summa Aurea* he quotes from Aristotle's ethical writings, the *De Anima*, the *Physics*, and the *Metaphysics* (book I, chap. 3, quaest. 1). The quotations from Aristotle's ethics are taken from the so-called *Ethica Vetus* (a translation of the second and third books of the *Nicomachean Ethics*, which might go back to Boethius).

[70] Also called *Summa super Quattuor Libros Sententiarum*, a commentary on Peter Lombard's famous *Sententiae*. There exist many MSS of this *Summa Aurea* as well as several excerpts from it, the most important being the *Extractiones Summae Magistri Guillelmi Altissiodorensis a Magistro Ardenco Papiensi Compilatae*; and the *Summa Magistri Wilhelmi Altissiodorensis Abbreviata a Magistro Herberto.*.

[71] *Summa Aurea*, book III, trac. 7, chap. 1, quaest. 1-5; See *Summa Aurea Dictoris Guilelmi Altissiodorensis, in Quattuor Libris Explanatio*, edit. Reynault, F., *fol.* 169^{r}—171^{v}.

[72] While William of Auxerre prefers the term *ius naturale*, a preference which might have been not so much one of deliberate choice but rather the result of his clinging to the traditional Roman Law nomenclature, St. Thomas Aquinas and with him the later scholastic writers on natural law deliberately insist on the usage of the term *lex naturalis*, since "*lex* is derived from *ligare* (to bind), because it binds one to act." (*Summa Theologica* I, II, quaest. 90, art. 1.) See, however, *ibid.*, quaest. 90, art. 4, ad obj. 3: "*lex* is derived from *legere* (to read) because it is written." This latter passage refers to Isidore of Seville, *Etymologiae* III, 2, 3.

least, without much deliberation." [73] The absolute and absolutely compelling nature of natural law is grounded in the fact that it consists of absolute precepts and interdictions,[74] a statement which probably goes back to Rufinus' insistence that the natural law "*constitit . . . in . . . mandatis, prohibitionibus, demonstrationibus*," [75] and that the *mandata* and *prohibitiones* can never be changed or modified [76]—a standpoint also taken by Stephen of Tournai.[77] Hence an absolute *mandatum* or *preceptum* in the sense of natural law is the famous "do unto another what you would have done unto yourself," while absolute *prohibitiones* are the interdictions of the Decalogue as well as this "do nothing unto another you would not have done unto yourself." The *demonstrationes* or practical counsels of *quod convenit*, on the other hand, are subject to change as the particular situation changes. Consequently, they compel only in a relative sense, justifying under certain circumstances even the opposite. Such a situation arises, for instance, in the case of self-defense," that is, whenever I find myself compelled to repell force with force.[78]

[73] *Summa Aurea*, book III, trac. 7, chap. 1, quaest. 1: ". . . quod naturalis ratio sine omni deliberatione aut sine magna dictat esse faciendum."

[74] *Ibid.*: "In iure sunt quaedam praecepta et quaedam prohibitiones et quaedam demonstrationes."

[75] See note 53, *supra*. [76] See note 55, *supra*. [77] See note 56, *supra*.

[78] *Summa Aurea* book III, trac. 7; chap. 1, quaest. 2;—In this connection William of Auxerre also touches upon the problem of 'original communal or collective property' of all things under the heavens. This original communal property he defines as a *demonstratio quod convenit*, a practical or pragmatic counsel which, as a convenient solution within a particular situation, does not enjoy the absoluteness of a true natural law mandate. In the state of original innocence, to be sure, this communal property constituted a *preceptum iuris naturalis*. But after the fall of man, which changed human nature by arousing in man greed and desire for earthly things, this original precept lost its absoluteness. For otherwise society would lapse into a state of anarchy, that is, into an everlasting war of all against all. If every one had a right to everything and, prompted by selfish greed, should actually enforce his right or rights, a *bellum omnium contra omnes* would necessarily break out. In addition William of Auxerre points out that the notion of private property, or the principle

The dictates of the divine law as contrasted with those of the natural law are, in the final analysis, different only *formaliter*, not *materialiter*. For the Divine Commandments must be obeyed *ex charitate*, that is, out of a supernatural love of God, while the mandates of natural law must be heeded out of a natural love for the right, just, and virtuous.[79] As to man's awareness of the basic principles and precepts of natural law William of Auxerre instances that even a child knows by nature what is right and what not. For the human soul a priori visualizes the *prima bonitas*, namely God, Who abhors and punishes all evil and sin. Hence the basic precepts of natural law, being innate to man, come to every one spontaneously and without the intermediary of either ratiocination or rational deduction or induction.[80] In this William of Auxerre follows closely in the footsteps of St. Augustine, who had declared natural law to be man's conscious participation in the *lex aeterna*, the imprint of the *lex aeterna* on man's individual soul.[81] William of Auxerre likewise adopts the Augustinian idea of the *bonum omne boni*,[82] the understanding of which forms the necessary presupposition for our full realization of all that is good and just.[83]

of giving to every one his own and due, in itself is part of the natural law, as is evinced by the absolute commandment, 'Thou shalt not steal' (*Exodus* 20 15; *Leviticus* 19 11; *Deuteronomy* 5: 19; *Matth.* 19: 18; *Romans* 13: 9; 1 *Thess.* 4: 6). This commandment, according to William of Auxerre, is declaratory of the first principle of natural law, the so-called 'Golden Rule.' Since, therefore, theft constitutes an infraction of the natural law, the principle of private (individual) property or property rights must be part of the natural law.

These problems of collective (or communal) and private property have been a much discussed subject among mediaeval writers. See, for instance, Isidore of Seville, *Etymologiae* V, 4; and St. Thomas Aquinas, *Summa Theologica* I, II, quaest. 98, art. 1; II. II, quaest. 66, art. 1; art. 2.

[79] *Summa Aurea* book III, trac. 7, chap. 1, quaest. 3.

[80] *Ibid.*, quaest. 4.

[81] *De Diversis Quaestionibus*, quaest. 53, 2.

[82] *De Trinitate* VIII, 3; VIII, 4.

[83] Compare *Confessiones* XI, 10; also *De Vera Religione* II, 21; *De Libero Arbitrio* II, 9, 26; *De Trinitate* XIV, 15, 21.

In the wake of William of Auxerre we find a few theologians dealing with problems of natural law, including, among others, Johannes of Treviso, whose *Summa* (book III) contains a chapter *De Iure Naturali.*[84] This chapter is, however, essentially but an excerpt from William of Auxerre. We should also mention Roland of Cremona,[85] who in his *Summa*[86] discusses briefly the nature of natural law.[87] Following closely the Augustinian pattern in all major questions concerning law and justice, Roland makes a most significant addition to the established natural law tradition by pointing out that natural law—the *secondary* precepts of natural law as contrasted with the *primary* principles of natural law—is manifold and thus changes with time and place.[88] This differentation between a changing secondary natural law and an unchanging primary natural law is a distinction of the first magnitude. It was taken over by many a scholastic writer on natural law and constitutes a most valuable contribution to the scientific treatment of its problems. Besides Johannes of Treviso and Roland of Cremona we may also include in this group Philip of Grève or Philippus Grevius.[89] In his *Summa Quaestionum Theologicarum,*[90] which

[84] In: *Cod. Vat. Lat.* 1187.

[85] Compare Mechini, L., *Il Beato Rolando da Cremona*; Denifle, H., in: *Archiv für Literatur- und Kirchengeschichte des Mittelalters,* vol. I, p. 201 ff.; Ehrle, F., "*S. Dominigo, le origini del primo studio generale del suo ordine a Parigi e la Summa Theologica del primo Maestro Rolando da Cremona,*" in: Miscell. Dominica, p. 85 ff.; Ehrle, F., in: *Xenia Thomistica* vol. III, p. 517-588.

[86] In: *Bibl. Mazarine,* Paris, Cod. 795.

[87] *Ibid., fol.* 132r-133r: Utrum habere unicam (uxorem) sit de iure naturali?

[88] The term *secondary* natural law and the idea of its changing nature play an important part in St. Thomas Aquinas. See, for instance, *Summa Theologica* I, II, quest. 94, art. 4; art. 5.

[89] Compare Minges, P., "Philosophiegeschichtliche Bemerkungen über Philipp von Grève," in: *Philosophisches Jahrbuch,* vol. XXVII, p. 21 ff.; The *Summa Quaestionum Theologicarum* of Philip of Grève is heavily relied upon by Alexander of Hales. See Minges, P., *Archivum Franciscanum Historicum,* vol. VI, p. 433 ff.

[90] In: *Cod. Vat. Lat.* 7669;

deals with many problems of ethics and morals, Philip touches with a few passing remarks upon questions of natural law as they arise in connection with the nature of justice.[91] So far as I can see, his observations, however, contribute nothing essentially new to the general and established Augustinian tradition. In this regard he is not on a level with either William of Auxerre or Alexander of Hales.

In the third part of his *Summa Universae Theologiae*[92]

[91] *Ibid.*, fol. 130 ff.

[92] The *Summa Universae Theologiae*, which was begun around 1230, is an extensive system of theology, closely modelled after the *Sententiae* or *Summae* of earlier theologians, particularly the *Sententiae* of Peter Lombard, although it is more detailed and richer in content than the latter. Following the example of Peter Abaelard, Alexander of Hales makes ample use of the *sic-et-non* method, as well as the dialectical triad of *pro*, *contra*, and *solutio*. Opposing views are repudiated through the employment of such dialectic means as the *definitio*, the *distinctio*, and the syllogism.

The *Summa Universae Theologiae* is divided into four major parts, of which only the first part was completed by Alexander himself. (See Felder, H., *Geschichte der wissenschaftlichen Studien im Franziskanerorden*, p. 193; 208 ff.) Roger Bacon (in: *Opus Minus*, edit. Brewer, p. 326) is rather sceptical about Alexander's authorship (quam ipse non fecit, sed alii), referring perhaps to parts 2-4 of the *Summa Universae Theologiae*. It is quite possible, then, that the passages dealing with the nature of law (pars III, quaest. 26 and quaest. 27) were not by Alexander. Question 26 begins with the following statement: "Expeditis inquisitionibus pertinentibus ad fidem . . . procedendum est ad inquisitiones de moribus." These words, which seem to initiate an entirely new treatise, do not very well fit into the middle of the third part of the *Summa*. The Vatican Library (*Cod. Vat. Lat.* 4298) contains a separate manuscript of the two *quaestiones* on law (quaest. 26 and 27) which begin with the passage quoted above, and which appears to constitute an independent essay on law and justice. Grabmann (in: *Das Naturrecht der Scholastik von Gratian bis Thomas von Aquino*, p. 24) points out that the introductory remark, "Summa theologicae disciplinae in duobus consistit, in fide et moribus," corresponds to the introductory passages found in two of Johannes de Rupella's (or de la Rochelle, died in 1245) unpublished manuscripts. (See Minges, P., "De Scriptis Quibusdam Fr. Johannes de Rupella," in: *Archivum Franciscanum Historicum*, vol. VI, p. 597 ff.) Also the so-called *Summa de Vitiis* (or *Summa Vitiorum*), ascribed to Johannes de Rupella, begins with the sentence, "Cum Summa theologicae disciplinae divisa est in duas partes, scilicet in fidem et mores . . ." Likewise the *Summa de Articulis* of Johannes de Rupella contains the following preamble: "Summa

Alexander of Hales dedicates two lengthy and detailed *quaestiones*[93] to the basic problems and nature of law, right, and justice. *Quaestio* 26, which follows rather closely the Augustinian model,[94] deals with the *lex aeterna.* In *membrum* 1 of *quaestio* 26 he investigates whether there is a *lex aeterna*: "*Si lex ratione constat, lex erit omne quod ratione constiterit. Si ergo providentia Dei constat ratione, ergo providentia Dei est lex; sed non nisi aeterna. Cum ergo providentia divina sit, constat legem aeternam esse.*" *Membrum* 2 declares that our mind is capable of visualizing such an eternal law. Hence it is known to rational man and this notion is impressed on the soul of man. As to the nature of the *lex aeterna* (*membrum* 3) Alexander of Hales states that the "*lex aeterna ea est quae iustum est ut omnia sint ordinatissima.*" For the *lex aeterna* is the "*summa ratio et voluntas Dei,*" the "*principium ordinis naturalis rationalis.*" Membrum 4 is concerned with the purpose or end of the *lex aeterna* according to the Divine essence: "*Potestas in Deo est principium ordinis. Si ergo lex aeterna est principium ordinis, ergo est in Deo secundum intentionem vel rationem* (*scil. Dei*)." The *lex aeterna* is composed of three

theologicae disciplinae in duabus consistit, in fide et moribus." The fact that the introductory passage to *quaestio* 26 of the third part of the *Summa Universae Theologiae* is completely identical with the preamble to the *Summa de Articulis, Summa de Vitiis,* and other writings of Johannes de Rupella strongly suggests that the parts 2, 3, and 4 of the *Summa Universae Theologiae* are the editorial work or even perhaps the contributions of several authors. This theory is also supported by a remark found in *Cod. Borgh.* 359, fol. 2r: "Incipit prima pars quaestionum super sententias (referring to the *Summa Universae Theologiae*) edite a fratribus minoribus." We might also mention here that many parts of the *Summa Universae Theologiae* show some striking similarities to the *Summa de Anima* of Johannes de Rupella.

[93] *Quaestio* 26 and *quaestio* 27; *quaestio* 26 is subdivided into nine *membra,* some of them containing several articles. *Quaestio* 27 is subdivided into four *membra,* which in turn are subdivided into several articles and paragraphs.

[94] Alexander of Hales frequently quotes from St. Augustine's *De Libero Arbitrio* and *De Vera Religione*; also from the *Confessiones* and the *De Civitate Dei.*

elements: *auctoritas, veritas, bonitas*—the *principium legis, forma legis,* and *finis legis.* It has authority because it cannot be a principle (*principium*) save through its authority; it has truth because no law in enacted without the use of right reason; it is ordained to an end, namely to *bonitas,* because no law exists which does not aim at some good. Hence the *lex aeterna* is a holy sanction which commands the good and proscribes the contrary.

The fifth *membrum,* which discusses the immutability of the *lex aeterna,* informs us that true 'internal justice,' which is not a matter of habit but rather the result of the most just law of God, always remains one and the same: "*et omne tale simpliciter est immutabile.*" Hence the *lex aeterna,* being just one, can never become subject to change or modification: "*Deus non mutat consilium—consilium Dei est ratio divina—sed sententiam.*" Since the *lex aeterna est ars aeterna boni et veri per se*" (*membrum* 6), ordained to one single end and purpose, there can be but one *lex aeterna.* In *membrum* 7, which is subdivided into several articles, is discussed the derivation of natural law and secular (positive or human) law from the *lex aeterna.* Articles 3 and 4 point out that, although natural law as well as secular law are vastly inferior to the *lex aeterna,* they are nevertheless derived from the *lex aeterna*; and this in the same manner as, for instance, every good in creation is derived from the first *bonitas* and every truth from the first *veritas.* Since the *lex aeterna* is that which *iustum est ut omnia sint ordinatissima,* in short, the *summa ratio cui obtemperandum est,* it follows (art. 4) that the *lex aeterna* must have its counterpart in man; a counterpart, that is, which is derived from the *lex aeterna* itself and which is called the *lex naturalis. Membrum* 8, which is concerned with the subjects of the *lex aeterna,* denies that God Himself is subject to the *lex aeterna* (art. 1 and 2). For God is not 'under,' but rather 'within' the *lex aeterna* through His free determination, as are the blessed in heaven

(art. 6). *Membrum* 9, which deals with the effects of the *lex aeterna*, instances that in its effects the *lex aeterna* causes all rational beings to conceive the absolute mandates as regards the good and the absolute interdictions as regards evil.

Quaestio 27 (*De Lege Naturali*) discusses the nature of natural law, in other words, that law which " is derived from the *lex aeterna*,[95] and the purpose of which is to direct the rational creatures." The first problem—namely, whether there is such a thing as a *lex naturalis*, and, if so, whether this *lex naturalis* is implanted (*increata*) in man (*membrum* 1, art. 1) Alexander of Hales answers by quoting *Romans* 2 : 14 ff.[96] Thus he essays to prove that the *lex naturalis* as well as its notion, the motivating ' norms ' by which man is directed towards the good, are innate to rational man in the same manner as, for instance, the basic principles of true and false. *Membrum* 1, art. 2, which raises the question whether the *lex naturalis* is acquired or something innate, contains the following significant distinction. In one way the "*lex naturalis est prima regula exemplaris*" and as such is a basic moral truth. Defined in this manner the *lex naturalis*, like the *lex aeterna*,[97] is innate (*increata*). In another way, however, the *lex naturalis* is merely a practical rule or counsel for the understanding of a certain concrete practical situation; it is, so to speak, but *secondary* natural law and therefore, in a certain sense, acquired through practical experience. Used in this second sense natural law is not only inferior to the *lex aeterna*, but can only be fully grasped in the light of the total concrete situation; while the *lex aeterna* itself must always be envisioned spiritually in the soul of man.[98] *Membrum* 2, art. 1 defines the nature of the *lex naturalis* as that act or actuality of reason as well as habit of the will which

[95] Compare quaest. 26, *membrum* 7.

[96] " For when the Gentiles, which have not the law, do by nature the things contained in the law . . . written in their hearts . . ."

[97] Compare quaest. 26, *membrum* 2.

[98] Compare quaest. 26, *membrum* 2.

every one understands and is conscious of. As a faculty both of reason and the will (art. 2) it operates in a trifold manner. In the first place it is a principle which, as a standard of comparison, binds the faculties of reason and the will. In the second place it constitutes a criterion for the proper exercise of reason. And thirdly, it operates by instigating man's will to do the good and avoid evil.[99] This *lex naturalis*, however, is not identical with moral conscience itself (art. 3), but constitutes that instance out of which moral conscience emerges and from which it receives its moral directives. For the *lex naturalis* instigates reason and the rational powers of man to pass moral

[99] With regard to the faculties of reason and the will the *lex naturalis* constitutes something that binds and 'brings together.' With regard to reason it is something that gives light to the latter; with regard to the will it is something that instigates to the good, in short, something that leads to the good. (*Quaest.* 27, membrum 2, art. 2.)

In this connection we should mention the so-called *synderesis* (or *synteresis*) which plays an important part in the natural law theory not only of Alexander of Hales, but of many scholastic writers preceding St. Thomas Aquinas. This *synderesis* in Alexander of Hales (quaest. 27, *membrum* 2, art. 3) is basically a *sui generis* "*potentia habitualis*" of the will which always tends towards the good. It is not, as has been suggested, synonymous with 'practical reason' or moral conscience. The term *synderesis* appears first in St. Jerome (*P. L.*, vol. 25, 22 AB): "Quartam ponunt, quae super haec (the λογικὸν, θυμικὸν, and ἐπιθυμικὸν) et extra haec tria est, quam Graeci vocant συντήρησιν quae scintilla conscientiae . . . in . . . pectore . . . non extinguitur . . ." Alexander of Neckham (died 1217) had already used this term in his *De Naturis Rerum* II, chap. 130 (edit. Wright, p. 211): "Etsi autem remurmeret scinderesis naturaliter bonum appetens . . ." Compare also his *De Laudibus Divinae Sapientiae*, dist. I, 128 (edit. Wright, p. 360). The definition of the term *synderesis* found in the *Summa de Creaturis* (II, tr. 1, quaest. 69, art. 1) of Albertus Magnus is most illuminating. It is the *scintilla conscientiae* and not the *conscientia* itself. For the *synderesis* remains always unchanged and cannot be lost through sin; neither is it exposed to error. It is, in the final analysis, a *potentia* innate in all men which urges man to do the good and avoid evil. The *conscientia proprie dicta*, on the other hand, is subject to error. As to the history of the term *synderesis*, see Nitzsch, F., "Über die Entstehung der scholastischen Lehre von der Synderesis," in: *Jahrbuch für protestantische Theologie*, vol. V, (1879) p. 492 ff.; Leiber, R., "Name und Begriff der Synderesis," in: *Philosophisches Jahrbuch*, 1912, p. 372 ff.

judgments in order that the good may be done and evil avoided. In doing so it shapes the moral conscience of man.

Membrum 2, art. 1 states that, while the effects of the *lex naturalis* might be deleted, particularly if "the clouds of sin interpose between God and the soul," the *lex naturalis* as such can be abolished as little as the light of the sun, though the latter at times might be eclipsed. For the *lex naturalis* always remains in the heart of man, being imprinted on the soul as an ineffaceable image. The question whether the *lex naturalis* could be subject to change (art. 2) is solved by a reference to the distinction already made by Rufinus[100] and William of Auxerre[101] concerning the nature of natural law; namely, to the subdivision of the function of natural law into *praecepta* (or *mandata*), *prohibitiones* (*interdicta*), and *demonstrationes* of *quod convenit.*[102] These *demonstrationes* differ vastly from the *praecepta* and *prohibitiones* in that the latter constitute the immutable element of natural law, while the *demonstrationes* might and will change according to time, place, and the concrete practical circumstances. In *membrum* 4, art. 1, par. 1 we are informed that natural law, which constitutes the foundation of all morals, as well as of everything that is called lawful, right, and just, becomes manifest in three different forms or ways; namely, as the *ius nationum*, *ius hominum*, and *ius divinum*. The *ius nationum* is that law which is common to all living creatures, that law which nature has taught all living beings. The *ius hominum*, on the other hand, more specifically pertains to rational man proper; it is the *ius gentium* of the Roman Law,[103] that which all peoples make use of. The *ius divinum*, again, is that law which directs man towards God and the Divine Grace.

[100] See note 53, *supra*. [101] See note 74, *supra*.

[102] The term *demonstratio* might be translated here as 'counsel of practical wisdom determined by a certain concrete situation.'

[103] *Digest* I, 1. 1. 7: "Ius gentium est quo Gentes humanae utuntur, quod a Naturali recedere facile intelligere licet; quia illud omnibus animalibus, hoc solis hominibus inte se commune sit." See also *Institutes* I, 1.

Now the *lex naturalis*, properly called so, to some extent takes into account the *ius nationum* and the *ius hominum*, that is, the *ius naturale*. For this *ius naturale* constitutes an element of the *lex naturalis*, or to be more exact, of the so-called *demonstrationes*. Hence what has been said about the *demonstrationes* applies also to the *ius naturale*.[104] It is intersting to note the juxtaposition of the *lex naturalis* and the *ius naturale* proposed by Alexander of Hales. The absolute nature of the *lex naturalis* is sharply contrasted with the relativity of the *ius naturale*, with what men do according to their psycho-physical essence and their established 'practical habits' conditioned by time, place, and historically developed and accrued customs. Human or positive law can never alter or run contrary to the absolute dictates of natural law (*membrum* 4, art. 1, par. 2); for the *lex naturalis* holds absolute supremacy over all laws enacted by man. *Membrum* 4, art. 3, par. 1, 2, and 3 deal with such natural law problems as matrimony, the *communio omnium possessio*, and the *una omnium libertas*; problems, that is, some of which we already have encountered in William of Auxerre.[105]

The *Cod. Borgh.* 139 (*saec.* XIII) in the *Vatican Library*, *folio* 97 *et passim*, contains a lengthy treatise on the nature of the *lex aeterna* and the *lex naturalis*.[106] This anonymous

[104] The juxtaposition of *lex naturalis* and *ius naturale* (*ius gentium*) in Alexander of Hales later became a problem of no mean concern to the scholastic thinkers. Compare, for instance, by the present writer, "The 'ius gentium' in the Philosophy of Law of St. Thomas Aquinas," in: *Notre Dame Lawyer*, vol. XVII, no. 1, p. 22 ff.; 25 ff.

[105] See note 78, *supra*.

[106] From the very fact that this anonymous treatise relies heavily on St. Augustine we may surmise that its author was a Franciscan. Grabmann (in: *Das Naturrecht der Scholastik von Gratian bis Thomas von Aquino*, p. 32 ff.), from whom I have gathered this information and whose reproduction of this treatise I am using, points out that towards the end of this manuscript (*fol.* 166^{r}-167^{r}) we find a table of contents enumerating (anonymously), among others, the title of the *Quaestiones de Cognitione* of Gebhard of Abbeville (Gerardus de Abbatisvilla). On *fol.* 132^{a} of the same manuscript we also find the *Quaestiones et Quodlibeta* of the Franciscan Eustachius of Arras, a disciple of Bonaventura. In view of the fact that

treatise, which is subdivided into three major *quaestiones*, not only follows closely the spirit of the Augustinian tradition in matters concerning the nature of law, right, and justice, but resorts to frequent quotations directly from the works of St. Augustine in order to prove its point. *Quaestio* 1 of this essay deals with the subject whether there is such a thing as a *lex aeterna*.[107] Here our anonymous author proposes that every immutable and infallible judgment must be derived from an infallible and immutable rule or norm; and any judgment concerning what rational man must do has to be infallible and immutable. Hence this practical judgment must be derived from an infallible and immutable rule or norm. But any rule or norm that may be posited only in order to be revoked afterwards cannot be infallible. Even a rule or norm which is or has been posited at one time, but is never revoked, though it may be infallible, can never be infallible by virtue of itself, being, as it were, an enacted rule. Hence another rule or norm is necessary, a rule, that is, which being infallible by virtue of itsef, is neither posited nor revoked, but eternal. Accordingly one has to dis-

Gebhard of Abbeville represents the Augustinian-Franciscan tradition it is quite possible that he might have been the author of this treatise.

[107] Since this anonymous treatise is a most lucid and compact presentation of the Augustinian tradition during the early part of the thirteenth century I shall give some of its text. For the text itself and the spelling of words I rely entirely on Grabmann (*l. c.*, p. 33 ff.).

"Quaesitum est de lege aeterna. An sit lex aeterna? Responsio. Omne iudicium immutabile sive infallabile derivatur et informatur ab aliqua infallabili regula. Iudicium de hiis, quae agenda sunt creaturae rationali, oportet esse infallabile. Ergo derivatur ab aliqua infallabili regula. Sed regula, quae ponitur et deponitur, non est infallabilis. Item regula quae ponitur et non deponitur, quamvis sit infallabilis, non tamen per se. Ergo preexigitur alia per se infallabilis regula, quae nec ponitur nec deponitur sed est aeterna. Iuxta hoc distinguitur triplex agendorum sive regula: una temporanea quae ponitur et deponitur: scilicet lex humana positiva. Altera perpetua quae ponitur sed non deponitur, ut lex naturalis menti rationali concreata. Tertia aeterna, quae nec ponitur nec deponitur quae est lex divina. . . . Lex aeterna primum exemplar est legum omnium. Lex perpetua a lege aeterna immediate transcribitur . . . ."

tinguish three meanings of the term law, or norm of what has to be done: namely, first, a temporal norm or rule which is posited and sooner or later revoked—the human or positive law; secondly, an eternal law which has been posited at one time but which is never revoked—the natural law innate and implanted in the rational mind of man; and, thirdly, the eternal law (*lex aeterna*) which is neither posited nor revoked—the Divine Law. The *lex aeterna* constitutes the *primum exemplar* of all laws, the natural law as well as the human law. From this *lex aeterna* a perpetual norm of all that is right and just is immediately transcribed upon our souls, while the positive or human law is derived from the eternal law through the intermediary of the natural law. Hence the good and wise lawgiver will always consult the *lex aeterna*. From all this our anonymous author infers that there is such a thing as a *lex aeterna*.

The term *lex aeterna* is to be understood in three different ways. In its narrowest and strictest meaning it is conceived with a view towards the (specific) good of the rational creature, thus becoming the rule or norm for the various actions of rational man. In its second and wider meaning it is understood as taking into account the sum of all goods within the created universe. In its third and widest meaning it is conceived in its relation to everything good or evil. For through the *lex aeterna* not only every good, but also every evil is put in its proper place. It must be conceded, therefore, that there is such a thing as a *lex aeterna* from which all and every law procedes. It must also be conceded that there exists a perpetual natural law as well as a human or positive law.[108]

[108] "Lex vero aeterna tribus modis accipitur. Primo mode stricte et respectu bonorum rationalis creaturae, prout est regula agendorum a creatura rationali. . . . Secundo modo large scilicet bonorum omnium totius creaturae . . . . Tertio modo largissime respectu omnium tam bonorum quam malorum, prout secundum Augustinum I. de libero arbitrio (the proper quotation is, De Libero Arbitrio I, 6, 15) lex aeterna est, qua iustum est ut omnia fiant ordinatissima per ipsam. Scilicet nec tantum

Quaestio 2 is concerned with the problem and nature of the *lex naturalis*—the *lex perpetua quae ponitur sed non deponitur.* The first issue is whether the *lex naturalis* is imprinted on the human mind. By relying on Johannes Damascenus and his statement that God is the Creator, Maintainer, and Administrator of all things, in short, the first and absolute efficient as well as final cause of everything, our anonymous author concludes that God has implanted in every creature the principles necessary for its existence, maintenance (survival), and guidance towards its proper end. Now there are three different manners of action common to the various creatures. Certain things or beings are active merely by 'natural compulsion,' without displaying of themselves either reason or feeling of their own. Such is the case with inorganic things or plants. Other beings, such as animals, are sentient and, to a certain degree, intelligently active, without, however, possessing the faculty of free choice and free determination, or the power of rational judgment. Finally, there are beings which act in conformity with their faculty of free determination and the rational power of intelligent discretion. These latter creatures alone are truly rational beings. According to these various faculties or powers of the different creatures God has endowed those beings which are without either reason or feeling with an inner principle through which they are guided in their natural 'instinct' and 'inclinations.' Likewise did He bestow on those which are devoid of the power of reasoning, but nevertheless possess sensation, the proper principles directing the conduct of their sensuous life. And, finally, He implanted in the rational being a principle by which it may control its intellectual and moral actions.[109]

bona sed etiam mala loco suo ordinantur. Concedo ergo quod aliqua lex est aeterna, a qua omnis derivatur lex, alia iusta sive perpetua sive positiva."

[109] "Quaesitum est de lege naturali. Primo scilicet utrum sit aliqua lex naturalis menti humanae impressa? Responsio. Sicut probat Damascenus II. libro de fide orthodoxa, c. 29, idem est omnium naturarum factor,

Since the rule or norm of proper action or conduct is called law, we are entitled to speak of a threefold meaning of the term *lex naturalis*. The rule which guides things devoid of reason, will, and sensation is called the *lex naturalis* in the widest sense of the term. The principle which directs the life of sentient beings devoid of the power of reasoning is the *lex naturalis* in a narrower sense. Hence the Roman Law dictum, "*Ius naturale est quod natura omnia animalia docuit . . .*," would apply here. The *lex naturalis* in the most appropriate and, at the same time, narrowest meaning of the term is that rule or norm which determines the rational creature in all his free actions and determination. In order to shed additional light on this problem our anonymous author enters into an interesting discussion of the etymology of the term '*lex*.' *Lex*, according to our author, alone, is not derived from the Latin word *legere* (to read) alone, or from *ligare* (to bind) alone; it is rather a combination of both: *quia ligat per electionem*. The rational being, by virtue of his power of reason and free determination, is capable of reading the principles of proper action impressed on his soul and thus of binding himself through his own free decision to comply with these principles. Hence the *lex naturalis*

contentor et provisor. Nam, ut ibidem dicit, voluntas divina est omnium virtus factiva, contentiva et provisiva. Unde et rerum creatio permanentia, gubernatio magnitudinem indicant divinae naturae, ut dicit Damascenus lib. I, c. 1. Quia ergo omnium naturarum est sufficientissimus creator, conservator et gubernator omnibus naturis indidit principia necessaria ad existentiam, ad permanentiam, ad gubernationem. Cuilibet ergo naturae est a deo principium aliquod inditum, quo subsistit, quo conservatur, quo in operibus suis ad finem debitum gubernatur. Sunt autem tria genera operum et operationum creaturum. Quaedam enim operantur solo instinctu naturali sine cognitione ut insensitiva. Quaedam cum cognitione sed sine electione ac distinctione sicut irrationabilia inanimantia . . . Quaedam vero cum discretione et preelectione ut sola rationabilia. Indidit ergo deus principium aliquod seu regulam creaturis insensibilibus, qua regulantur in operibus naturalibus. Item creaturis irrationalibus, qua regulantur in operibus sensualibus. Item creaturis rationalibus, qua regulantur in operibus moralibus seu rationalibus."

proprie dicta—the natural law in its narrowest meaning—is implanted in or impressed on rational man and on him alone.[110]

The third *quaestio* is concerned with the epistemological function and nature of natural law, and with the problem whether or not it is a habit of the rational soul.[111] Borrowing from Johannes Damascenus the statement that the soul has a dual *potentia*, namely an irrational *potentia* which acts by necessity and a rational which becomes active through free choice, our anonymous author maintains that the irrational *potentia* does not need a determining principle, in as much as it is outrightly destined to act and, hence, cannot deviate from its predetermined course. The rational *potentia* of the soul, on the other hand, stands in dire need of a directing principle, since it is prone to go astray. Now the '*habitus* of the soul' itself, with which nature has endowed every rational *potentia*, constitutes a disposition determining and inclining the *potentia* to turn into a corresponding *actus*. There is a dual *potentia* connected with man's rational soul: namely, the potency of reason or reasoning which might easily err in matters concerning truth or falsehood; and the potency of the will which might easily err in matters concerning good and evil. On account of this possi-

[110] "Quia ergo regula operandorum lex dicitur, ideo lex triplice accipitur. Nam regula dirigens in operabilibus sine cognitione dicitur lex naturalis largissime. . . . Regula vero dirigens in operabilibus per cognitionem sine electione dicitur lex naturalis minus large . . . . Regula dirigens in operabilibus ex electione dicitur lex naturalis proprie, de qua . . . . (dicitur) Glossa (of Walahfrid Strabo): lex naturalis est, qua quisque intellegit, quid bonum et quid malum. Lex quippe dicitur non a legendo solum nec a ligando, sed ab utroque, quia ligat per electionem. Insensibilia vero non legunt aliquid intra se, quia carent cognitione nec irrationabilia, quia potentia cognitiva colligata organo materiali non reflectitur supra se ad legendum aliquid in se quo reguletur in sua operatione, sed solum rationabilia legere possunt regulam sibi impressam et secundum illam inspectam se dirigere in finem et gubernare. Dico ergo, quod lex naturalis proprie dicta impressa est omni et soli rationali creaturae."

[111] ". . . quid sit lex naturalis, utrum scilicet sit habitus in anima vel aliud?"

bility for error God has implanted *naturaliter* in reason a *habitus* which directs the intellect, a *habitus*, that is, which contains the seminal reasons (*rationes seminales*) for all rational truths. And He did the same as regards the will, by implanting in the will a *habitus* to guide it, a *habitus*, that is, which becomes the seminal source of all moral virtues.[112]

After quoting from Boethius (*naturaliter nobis inserta est notio veri et boni*) and twice from St. Augustine, our anonymous author, by following the Aristotelian model,[113] distinguishes between the speculative and the practical reason. The speculative reason, which is subject to error, has as its goal the conception and understanding of the truth. The practical reason, on the other hand, which might also err in practical matters, aims at action and the achievement of works. On account of the ever present possibility of error a notion of the fundamental theoretical principles of proper reasoning is impressed upon the speculative reason, while the awareness of the basic norms of proper action and moral conduct is implanted in the practical reason. This notion of the general practical principles which are the rules of right and just action is called the *lex naturalis* in the narrowest sense of the term. Hence the

[112] "Secundum Damascenum lib. II, c. 12 (De Fide Orthodoxa) duplex est potentia in anima quaedam irrationalis, quae agit ex necessitate, quaedam rationalis quae ex liberate. Prima determinata est ad actum. Unde non indiget altera inclinatione vel determinatione, quia non potest deviare. Secunda indeterminata. Unde quia facile deviare potest indiget altero determinante. Habitus vero est dispositio potentiam ad actum sui generis determinans et inclinans. Prima igitur potentia non indiget habitu determinante. Secunda indiget et quia natura nec habundat superfluis nec deficit in necessariis ideo potentiis irrationalibus nullum habitum indidit innatum, potentiis vero rationalibus omnibus indidit. Est autem duplex potentia rationalis scilicet intellectus, qui facile errare potest circa verum et falsum, et affectus, qui facile errare potest circa bonum et malum. Ideo deus creator naturae naturaliter indidit intellectui habitum, per quem reguletur, scilicet seminationem omnium scientiarum, et effectui habitum. quo reguletur, scilicet seminationem virtutum omnium."

[113] *Metaphysics* 1025 b 18; 1025 b 25; also *De Anima* 412 a 11; 429 b 30.

lex naturalis (*moralis*) constitutes a practical *habitus* of rational man impressed on the soul of man by nature itself.[114] Hence the *lex naturalis* is a *habitus* of the soul, *naturaliter* imprinted on and expressed in the soul of man, or, to be more specific, expressed in the rational or cognitive but not the volitional or receptive powers of the soul; a *habitus*, that is, which has its seat in the practical and not the speculative faculty of the soul.[115]

This whole anonymous treatise on the nature and function of the *lex aeterna* and *lex naturalis* bears all the earmarks of the general Augustinian-Franciscan tradition and its characteristic elements; such as, for instance, the idea of the *rationes seminales*, the doctrine that human understanding comes through an 'innate light,' and the theory of the immediate apperception of the species through the intellect. Here as in Alexander of Hales the Augustinian theory of human understanding predominates. The two quotations from Aristotle[116] are by far overshadowed by those from St. Augustine. Aristotle is merely referred to by way of ornamentation, while St. Augustine furnishes not only the foundation and proof of practically every argument, but the very substance of the whole inquiry. The same holds true as regards another anonymous treatise[117]—*Quaestio est de lege aeterna*—which likewise deals with the nature of the *lex aeterna*,

[114] "Intellectus duplex est in nobis vel intellectus dupliciter consideratur, qui uterque errare potest, scilicet speculativus, cuius finis est veritas et practicus, cuius finis est opus secundum Philosophum . . . Ideo intellectui speculativo inserta est notio principiorum speculativorum . . . Intellectui vero practico inserta est notio principiorum universalium ut nemini faciendam esse iniuriam. . . . Haec autem notio principorum universalium cum sit regula operandorum lex naturalis appellatur. Unde lex naturalis est habitus cognitivus animae naturaliter impressus."

[115] "Dico ergo naturalem legem habitum esse impressum naturaliter in anima in parte eius cognitiva non affectiva et in intellectu practico non speculativo."

[116] See note 113, *supra*.

[117] In: *Cod.* 128 (*saec.* XIII) in the *Bibliotheca Communale d'Assisi*, *fol.* 213r ff.

and which in its articulation reminds us somewhat of Alexander of Hales.[118] It begins (*fol.* 213^{r}) like the essay of Alexander of Hales with the introductory question *an sit lex aeterna?* (*fol.* 213^{r}), and in all major points follows the pattern or disposition used by that author in his demonstration of the existence, essence, immutability, unity, effects, as well as man's awareness of the *lex aeterna.*[119]

Undoubtedly the most outstanding disciple of Alexander of Hales and probably the most important figure among the Franciscan theologians of the middle of the thirteenth century is Johannes Fidenza, also called St. Bonaventura (1221-1274).[120] L. Baur[121] has undertaken the extremely difficult task of col-

[118] *Quaestio* 26; see note 92 and 93, *supra.*

[119] Thus the second *quaestio* of the anonymous treatise, *an lex aeterna sit nota et impressa rationali creaturae* (*fol.* 214^{r}), corresponds to the second *membrum* of *quaestio* 26 of the *Summa Universae Theologiae,* book III. The third *quaestio, queritur de ipsa quiditate* (*legis aeternae*), found on *fol.* 214^{r}, corresponds to the third *membrum*; the fourth *quaestio, de immutabilitate legis aeternae* (*fol.* 214^{r}), to the fifth *membrum*; the fifth *quaestio, de unitate legis aeternae* (*fol.* 214^{v}), to the sixth *membrum*; the sixth *quaestio, de effectibus legis aeternae* (*fol.* 216^{v}), to the ninth *membrum,* etc. It is, therefore, quite possible that the author of this anonymous treatise was acquainted with or influenced by the *Summa Universae Theologiae* of Alexander of Hales.

[120] St. Bonaventura very successfully represents the old Augustinian tradition. In this he intends to be nothing more than the faithful disciple and successor of Alexander of Hales, whom he calls his teacher and spiritual father. This rather conservative attitude towards theological and philosophical problems in general is best expressed in his *Commentarii in Quattuor Libros Sententiarum Petri Lombardi* II, prael., 2, 1 ff: "Ad quemadmodum in primo libro sententiis adhaesi et communibus opinionibus magistrorum et potissime magistri et patris nostrae bonae memoriae fratris Alexandri, sic in consequentibus libris ac eorum vestigiis non recedam . . . Non enim intendo novas opiniones adversare, sed communes et approbatas retexere. Nec quisquam aestimit, quod novi scripti velini esse fabricator." Nevertheless St. Bonaventura is rather well acquainted with the works of Aristotle, whom he considers an authority second only to St. Augustine. As to his opinion concerning some of Aristotle's teachings see, among others, *Collationes in Hexameron,* vol. V, p. 360 ff., in: *Opera Omnia,* edit. PP. Collegii a S. Bonaventura.

[121] In: "Die Lehre vom Naturrecht bei Bonaventura," in: *Festschrift für Clemens Baeumker,* p. 217 ff.

lecting and arranging the many statements of St. Bonaventura concerning the essence of law and justice dispersed throughout his numerous writings. The very nature of these statements makes it quite clear that St. Bonaventura, who displays little acquaintance with the forensic or lego-philosophical literature of his day, in the main adheres to the general pattern laid down by St. Augustine. For St. Bonaventura, whose views on law, right, and justice fully conform to his avowed intention "not to recede from the path indicated by Alexander of Hales," [122] the *lex naturalis*, which he also calls the *lex naturae*, *dictamen naturae*, *ius naturale*, *ius naturae*, or *lex indita*, must, in accordance with the tradition initiated by the *Digest* and the *Institutes* and restated by Isidore of Seville, be distinguished from the *ius gentium* and the *ius positivum* or *ius civile*, which latter can never restrict or be prejudicial to the *lex naturalis*.

The term *lex naturalis* is used by St. Bonaventura in a trifold sense. It signifies, first, the *ius naturale proprie sive communiter dictum*; as such it is but that *quod in lege et Evangelio continetur*.[123] In its second meaning the *lex naturalis* is the *ius naturale magis proprie dictum*, the natural law in the wider sense of the term, which constitutes *quod est commune omnium nationum*, and, hence, reminds us of the Roman Law definition of the *ius gentium*. The third meaning of the *lex naturalis*, that is, of the *ius naturale propriissime dictum*, consists in that *quod natura impressit animalibus*; [124] in short, in the Roman Law definition of the *ius naturale*. This *ius naturale proprissime dictum* of St. Bonaventura is primarily the universal natural order of things imposed on the whole of creation, and, thus, on every creature as well, according to its essence and the end to

[122] See note 120, *supra*.

[123] This statement might have been taken from Gratian, *Decretum*, *canon* I, *dist.* 1;—Nevertheless St. Bonaventura was fully aware of the difference between the *lex naturalis* and the *lex divina* promulgated by the Scriptures.

[124] V. *Sententiae* (*Commentarii in Quattuor Libros Sententiarum Petri Lombardi*, *dist.* 33, art. 1, quaest. 2).

which it is ordained. With regard to man, natural law in its third meaning does not limit itself to the natural or animal impulses and instincts of man, but aims at the control of man's rational and volitional faculties. For only through man's reason and his power of free moral determination, that is, through the two faculties which belong to the essence of man and by which he excells all other creatures, natural law may become effective in man. Hence natural law signifies, in the final analysis, the rational order of 'practical reason'; it is for rational and moral man a '*torso code*' of leading principles given by God Himself in order that man may live a rational and moral life.

Moral conscience, according to St. Bonaventura, is a habit of the intellect, an abiding power residing in the human soul. It is, in other words, a *naturale judicium* through which man's practical reason immediately and without further ratiocination conceives and fully understands the basic principles of right and wrong, good and evil, just and unjust. The '*synderesis*,'[125] on the other hand, denotes a habit of the volitional life of the human soul through which the free will of man manifests a natural inclination towards the good and just, the *bonum et honestum*. As such it constitutes a receptive faculty of the soul,[126] namely the ability to follow the objective moral dictates. The *lex naturalis*, being but a habit common to all men, expresses the specific content of the *lex aeterna* which is always impressed on our soul and of which the *lex naturalis* is but an image. In its *subjective* aspect this *lex naturalis* denotes primarily a habit of the soul which concerns the intellect as well as

[125] As to the meaning of the term '*synderesis*' see note 99, *supra*.

[126] This voluntarist interpretation of the '*synderesis*' in St. Bonaventura essentially differs from that of St. Thomas Aquinas. St. Thomas declares it a habit of 'practical reason' through which man becomes aware of the essential moral dictates (*Summa Theologica* I, quaest. 79, art. 12). Again, according to St. Thomas, moral conscience constitutes that faculty which becomes active in the *practical application* of the moral dictates to concrete instances of human action (*ibid.*, I, quaest. 79, art. 13).

the will, the moral conscience as well as the '*synderesis.*' In its *objective* nature, however, the *lex naturalis* signifies the sum total of the basic moral dictates. In this the *lex naturalis* is the object of the moral conscience and the '*synderesis,*' of the *conscientia sicut dictans* and the *synteresis sicut inclinans.* The particular mandates or dictates of the *lex naturalis,* according to St. Bonaventura, are derived from 'right reason' with the help of proper analysis of the fundamental or general principles of natural law, as well as from the moral conscience of man and the established *ius gentium,* which but reflects the moral and legal convictions of the whole of mankind.

The fundamental issue of the *lex naturalis* is that the good is to be done and evil to be avoided. In this basic issue three leading ideas are to be found: namely, the principle of 'reciprocity' which the so-called 'Golden Rule' so eloquently professes; the principle of moral order; and the principle of man's submission to the *recta ratio.* The principle of moral order, which contains St. Bonaventura's most relevant views on the nature and function of law and justice, primarily is concerned with the many relations existing among men. Used in the specific sense of moral order among men the *lex naturalis* is actually the *ius naturale.* The natural moral as well as legal duties of man towards man, in short, the ethico-social dictates of right reason, consist, above all, in those duties or mandates which are derived from the 'Golden Rule' and which aim at the establishment and maintenance of an harmonious and co-operative human society. Of special interest, in this connection, is St. Bonaventura's justification by natural law of the existing social stratification and man's duty to obey his superiors. In the state of original innocence, to be sure, all men were equal in rank according to natural law. Through the fall of man, however, which obscured and diminished his power of making proper moral judgments all by himself, the unquestioning submission of man to the authority of his superiors became a fundamental dictum of

natural law. Also parts of the basic principles of the natural moral order envisioned by St. Bonaventura are the practice of Christian charity and a sense of reverence for man's dignity.

In a broader sense the Ten Commandments, with regard to their various content, are part of the *lex naturalis* in so far as they could never comprise any particular mandate or interdiction which is not at least implicitly already contained in the *lex naturalis*. The *lex naturalis*, as such, *dictat*, *obligat*, and *ligat*; its principles or precepts *ordninantur ad rectitudinem et honestatem vitae*.[127] The ultimate grounds for the compelling and morally binding nature of the *lex naturalis* must be looked for in the fact that it denotes a dictate of the *recta ratio;* a *recta ratio*, that is, the righteousness of which is determined by its proper relationship to the *lex aeterna*, or, in other words, by the proper correlation of the *lex naturalis* and the *lex aeterna*. Hence the *lex naturalis* constitutes, on a somewhat narrower scale, the image of the *lex aeterna* impressed upon the soul of man. In view of its absolute and abiding nature the *lex naturalis* or *ius naturale*, the sum total of those basic dictates of right reason which determines the proper relationship of man to man, can never be abolished or made the subject of change.[128]

Of Matteo d'Aquasparte, the most prominent disciple of St. Bonaventura,[129] we possess *Quaestiones Disputatae de Legi-*

[127] II. *Sententiae, dist.* 35, art. *unic.*, quaest. 3.

[128] St. Bonaventura does not consider the *lex naturalis* the product of an arbitrary act of the Divine Will or Omnipotence, as did somewhat later the more extreme followers of Duns Scotus. As regards the question whether God Himself could change the *lex naturalis*, St. Bonaventura uses the following distinction: While God may abolish, alter, or modify the *ius naturale* which is concerned with the relation of man to man; he cannot change the *lex naturalis* which deals with man's relationship to God.

[129] Matteo d'Aquasparte (1235 or 1240-1302) not only copies *verbatim* whole passages from St. Bonaventura, but also leans heavily on the authority of St. Augustine, as is evidenced by his many quotations from the latter. For additional literature Grabmann, M., *Die philosophische und theologische Erkenntnislehre des Kardinals Mattheas von Aquasparta;* Longprè, E., "Thomas de York et Matthieu d'Aquasparta," in: *Arch.*

bus,[130] a systematic essay on the nature of natural law, right, and justice, which forms an integral part of his famous *Quaestiones Disputatae.*[131] This treatise *De Legibus,* which in its precise disposition and articulation reminds us somewhat of the lego-philosophical acumen of St. Thomas Aquinas, contains one of the clearest and most penetarting discussions of the ultimate problems of law and legal philosophy the Augustinian-Franciscan tradition of the thirteenth century produced. His first question, namely *utrum sit dare vel ponere aliquam legem aeternam,*[132] occasions Matteo to define the nature of law in general. Law, according to him, is the rule, as well as the rationale residing in the very essence of the ruler. It is the very 'instrument' through which the ruler directs, rules, and determines his subjects.[133] The existence of a *lex aeterna* is a matter of absolute certainty:[134] *necessarium est ponere legem aeternam, regulam scilicet sive rationem, per quam rector gubernator et princeps creaturam omnem rationalem sive intellectualem angelicam vel humanam dirigit et disponit.*[135] The next question, which deals with the existence and nature of the *lex naturalis,* is closely related to the first question. Here also Matteo asserts *simpliciter, absolute,* and *firmiter* the reality of the natural law which is *in creatura qualibet intellectualis angelica vel humana,* that is, *naturaliter indita et impressa*

d'hist. doctr. et litter. du moyen age, vol. I (1926/27), p. 272; 293 ff.; Ehrle, Fr., *Xenia Thomistica,* vol. III, 587 ff.

[130] See *Cod.* 159 (*saec.* XIII-XIV) in the *Bibliotheca Communale d'Assisi, fol.* 240r-282v.

[131] *Ibid., fol.* 216r-302v; On *fol.* 216r (on top of the sheet) we find the following remark, entered by some unknown person: "Quaestiones disputatae XV fratris Mathei Ordinis Minorum Generalis Ministri quas disputavit in Curia Romana."

[132] *Ibid., fol.* 240r.

[133] *Ibid., fol.* 240r: "Est autem lex regula vel ratio in gubernante per quam subjecta dirigit, ordinat et disponit."

[134] *Ibid., fol.* 240r: "Ad istam quaestionem (utrum sit lex aeterna) simpliciter et absolute respondendum est et firmiter asserendum ac nullatenus dubitandum . . ."

[135] *Ibid., fol.* 240r.

in the soul of every rational being. According to its essence the *lex naturalis* is but "*quaedam ratio, regula vel dictamen practicum intellectus in finem dirigens voluntatem et secundum exigentiam finis dictans, quid appetendum quidve fugiendum, quid agendum quidve cavendum et declinandum sit.*" [136]

The *lex naturalis* contains *one* fundamental and universal principle, namely *quod tibi non vis fieri, alteri ne feceris.* Besides this principle it is also made up of *several* precepts which are derived from this one principle; such as, *Deum esse colendum, honeste esse vivendum, parentes esse honorandos, proximis esse subserviendum, in necessitate nulli offensam vel injuriam esse arrogandam.* These precepts of natural law are in themselves immutable rules or norms; they are *inscriptae in mente cuiuslibet.*[137] The question following deals with the problem *utrum praeter legem naturalem necesse sit dare hominem aliquam legem scriptam, i. e.,* the positive or human law.[138] It is a problem concerning not only the need for or function of a human law, but also the relationship of the human law to natural law; it is answered by Matteo in a thoroughly Augustinian fashion and with heavy reliance on quotations from the works of St. Augustine.[139]

Albertus Magnus (1193-1280), the 'Doctor Universalis' whose importance and influence Roger Bacon has so aptly described,[140] has also written a lengthy but little known treatise on the nature and function of law and justice. This treatise, which is entitled *De Bono sive de Virtutibus,*[141] forms an

[136] *Ibid., fol.* 243[r] ff.
[137] *Ibid., fol.* 244[r].
[138] *Ibid., fol.* 247[a].
[139] *Ibid., fol.* 247[a] ff.
[140] See *Opera Inedita, Opus Tertium* (edit. Brewer), 30.
[141] This *De Bono sive de Virtutibus* inserted in the *Summa de Creaturis* is not identical with Albert's *Tractatus de Natura Boni,* though in many respects very similar to the latter.—See Pelster, F., "Der Tractatus de Natura Boni," in: *Theol. Quartalzeitschrift* 101 (1920), p. 64 ff.;—The *De Bono sive de Virtutibus* constitutes an early work of Albert, being written between 1240 and 1245 at a time when Albert had come in contact with the translation of only the first three books of Aristotle's *Nicomachean*

essential part of his not yet completely published *Summa de Creaturis.*[142] The *De Bono sive de Virtutibus* is of special significance in as much as the approximate date of its origin makes it quite clear that at the time Albert wrote on law and justice he had not yet come in contact with the fifth book of the *Nicomachean Ethics.*[143] Hence his main authorities are the Church Fathers and, particularly, St Augustine.[144] After having dealt with the seven cardinal virtues, or, to be more exact, after having expounded the virtue of justice, Albert enters into a thorough discussion of law and right in *De Jure* and *De Lege.* His observations on the nature of the *ius naturale* [145] are subdivided into several questions: *Quid sit ius naturale secundum substantiam et definitionem? Quo modo dicatur? Quae sunt de iure naturali? Utrum ea quae sunt de iure naturali recipiant dispensationem vel non?* [146]

In the first question concerning the nature of natural law according to its essence and definition Albert shows that the *iura universalia* are to be found in the power of reason to arrive at moral judgments.[147] For, as St. Paul has pointed out, even the Gentiles, having the law written in their hearts, "do by nature the things contained in the law." [148] "*Et vocantur iura universalia illa dirigentia nos in opere, in quibus non est error, neque dubium, in quibus naturale iudicatorium rationis vel synderesis informatum accipit, quid faciendum vel non faciendum.*" [149] Among these *iura universalia* are the 'Golden Rule'

Ethics.—See Pelzer, H., "Les Version Latines des Ouvrages de Morale Conservées sous le Nom d'Aristotle au XIII[e] Siecle," in: *Revue Néoschol. de Philos.*, 1921, p. 316 ff.; 378 ff.

[142] See Grabmann, M., *Drei ungedruckte Teile der Summa de Creaturis Albert des Grossen*, particularly p. 65 ff.

[143] See note 141, *supra.*

[144] For information and pagination I am using the manuscript (*G B f 79*) in the *City Archives* of the City of Cologne.

[145] It should be noted that Albert uses the term *ius naturale* wherever St. Thomas Aquinas insists upon the usage of *lex naturalis.*

[146] *L. c., fol.* 166[r].

[147] *Ibid., fol.* 168[r].

[148] *Romans* 2: 14-15.

[149] *L. c., fol.* 168[r].

and the Ten Commandments. The more universal and general the moral rules or dictates are, *tanto sunt magis substantialiter iuris naturalis* [150]—a statement which very well could have been made by St. Anselm of Canterbury. Since man possesses the faculty of reason all these fundamental directives of proper action and righteous moral judgment are written in the heart of man. From the innate *iura universalia* we have to distinguish certain *conclusiones* drawn therefrom, *conclusiones*, that is, which are primarily concerned with the practical and concrete application of the general principles of natural law. All men possess, through the *habitus* of practical reason which directs all our actions, a *potentia* for the *iura universalia*. Knowing, as it were, these *iura universalia* or basic principles of right and wrong, we are immediately aware of what is right and wrong according to natural law. Our consciousness of these principles is not the result of some derivation or conclusion from other principles or facts, but comes to us by itself and for itself. In this sense our awareness of the *iura universalia* constitutes something implanted in man, a fact which, as Albert himself concludes, turns natural law into a moral habit.[151]

The next question, namely, in how many ways may we speak of natural law,[152] solicits from Albert the following definition: "*Est ius naturale nihil aliud quam ius rationis, sive debitum, secundum quod natura est ratio.*" [153] Hence natural law is the law of right reason. As such it embodies all those practical dictates which are consistent with right reason; dictates, that is, which follow immediately from the rational nature of man as well as from his natural essence, which itself is determined and regulated by reason. Albert's statement that "*natura est ratio*" in itself is open to three different interpretations, according to whether the emphasis is put on either *ratio* or *natura*, or whether

[150] *Ibid., fol.* 168r.
[151] *Ibid., fol.* 170r ff.
[152] *Ibid., fol.* 168r.
[153] *Ibid., fol.* 173v.

it rests equally on both *ratio* and *natura.*[154] "*Si autem accipitur ut natura, tunc ipsa erit principium operum pertinentium ad consistentiam salutis eius in quo est et ratiocinabitur de illis sicut sunt pertinentia ad salutem individui et sunt cibus, vestitus, domus et dilectio sanitatis, procuratio medicinae et alia huiusmodi, quae pro nobis invenimus ratiocinando de illis. Similiter pertinentia saluti specii ut uxor et proles et dilectio et providentia utrorumque.*" [155] In short, if the emphasis rests on *natura*, that is, on the natural and naturally ordained essence of man, natural law constitutes, as did the *ius naturale* as defined by Roman Law, the principle of physical survival and well being of the natural essence of man. Although the physical nature or essence of man, as contrasted with his reason, seems to predominate here, the *ratio* itself by no means remains without significance. For it is this *ratio* which demonstrates what is appropriate to human nature and its well being according to natural law. Hence everything that runs contrary to natural law also runs contrary to human nature and right reason. It is the *recta ratio* which takes into acount the exigencies of human nature and in doing so determines, through the dictates of natural law which itself is part of the *recta ratio*, what is compatible with human nature and what is not.

"*Si autem (ius naturale) intellegatur magis ut ratio rerum, tunc erit de hiis, quae pertinent ad religionem et iustitiam et honestatem rationis in se et ad alios, ita tamen quod habent aliquid de natura et non tota sit ratio. Sed tunc natura accipitur ut ratio in bonum ordinata per seminaria boni pertinentia ad vitam. Quae seminaria sunt ius naturale, et de iure naturali sunt mandata utriusque tabulae prout generaliter et indeterminata accipiuntur et breviter quicquid est honestum in suis generibus est de iure naturali.*" [156] In other words, if the

[154] *Ibid., fol.* 173v: "Cum enim dicitur, quod natura est ratio, potest intellegi magis ut natura vel magis ut ratio vel aeque natura et ratio."
[155] *Ibid., fol.* 173v. [156] *Ibid., fol.* 173r.

emphasis rests on the *ratio* rather than on *natura*, natural law is primarily concerned with matters of religion, justice, and the honest and honorable conduct of life. It would also take into account man's moral struggles within himself as well as man's multifarious relationships with other men. But here also the *natura*, the natural essence and exigencies of human nature are not completely ignored, but rather interpreted and restated as something tending towards reason itself. This natural trend towards reason, which constitutes but an element of the rational nature of man, is a 'seminal power' or an inclination towards the good and just; it is nothing else than the *ius naturale* interpreted from the viewpoint of the *ratio*. Hence not only the Ten Commandments in their general pronouncements, but everything which is basically honorable and honest (*honestus*), form part of natural law.

"*Tertia est ratio naturalis equaliter ratio et natura et sic pertinet ad ius naturale quod ex ratione et causa in commodum hominis et utilitatem est provisum et semper est in specie secundum seminaria iuris universalis et non secundum casus vel consilium determinatum, sicut providere domui, dispensare familiam, elegere praelatos ad vindictam malorum et laudem bonorum et custodire propria et huiusmodi.*" [157] In short, should the emphasis rest equally on *ratio* and *natura*, then natural law signifies all that which not only directs man to this personal well being, but also institutes a commonwealth of men according to reason and the 'seminal powers' of natural law inherent in reason. Hence these basic directives are not the product of historical contingency or the result of long deliberations, but rather the effects of the germinating moral forces inseparably linked with right reason.[158]

The very fact that the natural law contains the dictates or

[157] *Ibid., fol.* 173r.

[158] As to the content of these specific directives, see *ibid., fol.* 173r;—'*Praelates*' means in this connection public authorities.

directives to which man owes his general well being, in itself brings natural law in close proximity to the human or positive law. It is not surprising, therefore, that Albert in this connection treats also the relationship of the human law to natural law, or, to be more specific, the manner in which the human law emanates from the natural law. According to what has been said previously, the natural law "*non est nisi de ultimis et universalissimis principiis iuris humani et est ipsa principia, ut habitum est.*" [159] As such a body of most universal and general principles naturally suffers the fate of all generalizations: "*Sicut autem non est unum principium intellectus speculativi, quo scit scibilia omnia, ita non est unum principium practici intellectus, quo scit omnia operabilia. Sed sicut variantur illa per materias diversas, ita etiam ista per opera diversa et status operantium et locum et tempus: Et ideo dicimus, quod tribus modis aliqua sunt de iure naturali, scilicet essentialiter et subjective et particulariter.*" [160] In others words, there is not just one single principle of practical reason by means of which we conceive and judge *all* possible actions. The diversity of human endeavours or affairs as well as the changes of time and place demand rather a plurality of natural law principles and dicta.

Now everything that pertains to natural law does so either *essentialiter, subjective,* or *particulariter.* "*Essentialiter sunt ipsa principia supposita . . . subjective autem sunt ipsa communia supposita illorum principium, quae non trahunt originem nisi a ratione naturali . . . particulariter autem sicut sunt ea, quae a plebiscitis et senatus consultis et responsis sapientium determinantur.*" [161] According to its essence natural law con-

[159] *Ibid., fol.* 176r. [160] *Ibid., fol.* 176r.

[161] *Ibid., fol.* 176r;—The definition of what constitutes natural law *in particulariter* is taken from *Digest* I, 1 *De Iustitia et Iure* 2, 9: "Proprie dictum ius civile est, quod ex legibus, plebiscitis, senatus consultis, decretis principum, auctoritate prudentium venit." Compare also *Institutes* I, 2, 4; I, 2, 5; I, 2, 8.

sists in certain most universal principles, while according to its subjective aspect it also contains the basic forms of the application of these principles in practice. In a particular sense, again, natural law also includes that which the people itself enacts as law, what the authorities decree, and what the learned legal profession holds in matters concerning the law. But these popular enactments, authoritative decrees, and professional opinions originate "*non secundum vi naturae, sed partiis a conditionibus hominum . . . (quae) non determinantur in toto ex ratione, non tamen determinantur in aliquo contra rationem.*" [162]

Summarizing we may say that the lego-philosophical tradition from St. Augustine to St. Thomas Aquinas, so far as its basic substance is concerned, essentially moves along those lines which were laid down authoritatively by St. Augustine. Many conceptual definitions and distinctions used during this period were borrowed from the Roman Law. In respect to this latter phenomenon the influence of Isidore of Seville and his *Etymologiae* should not be underrated. Likewise the *Decretum Gratiani* and the works of Gratian's commentators, who themselves were under the influence of the Justinian Code, contributed much to the revival of legal speculation and discussion. It should also be remembered that particularly the efforts of the so-called Victorines to return to a more thorough study of and reliance on the works of St. Augustine and to transfer the principle of immediate inner experience from the religio-metaphysical sphere to the empirical sphere did much in bringing about a renascence of a constructive and comprehensive treatment of those problems which, within an all encompassing theological and philosophical system, are concerned with the nature and function of law, right, and justice. Towards the end of this development references to Aristotle seem to appear more and more frequently, a phenomenon which must not be taken too seriously, however, for the majority of the quotations from the works of Aristotle

[162] *L. c., fol.* 176r.

are merely ornamental. St. Augustine remains the only true and unchallenged authority, that one universal source and inspiration which gives form and substance to this particular period. Despite this general reliance on one single authority in nearly all the fundamental questions of the philosophy of law; and despite a carefully observed adherence to their more immediate predecessors, we are nevertheless able to discern among the various writers on the philosophy of law a definite diversity and originality of viewpoint within various attempts to solve the basic problems of the *jurisprudentia perennis.* At the same time a noticeable lack of systematic balance occasionally seems to mar these somewhat groping efforts to integrate the problems of law, right, and justice into a major and consistent system of theological and philosophical speculation. It remained for St. Thomas Aquinas to achieve this complete and harmonious integration.

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ON THE 'BEING' OF METAPHYSICS

IF, as Gilson argues in his *Unity of Philosophical Experience,* philosophy defines itself by its own history as the study of ultimate reality, philosophers have, nevertheless, reached no such agreement on the reality's nature. From Heraclitus to Bergson, from Paramenides to Whitehead, from Plato to Brunschvig, Eddington, and Jeans, philosophical systems divide themselves according to their attitude toward being as the ultimate resolution of the data presented in sensation. They differ, as systems, because they differed at the outset in their conception of the reality they study. If a small error in the beginning becomes a great one in the end, it is important at the outset to consider the object of metaphysical speculation.[1]

Augustine long ago pointed out that there is a kernel of truth in every system of philosophy. The true philosophy is the study of *what is,* for only then do we have the conformity between knower and being which is the very definition of truth. The failure of false philosophies arises from their *partial* nature, their confusion of the part, whether it be the idea, the object, the substance, the accident, the agent, the operation, with the whole. For the part does not constitute the whole of *what is*; when its nature is exaggerated to form the totality itself, we have a false notion of reality, a false system of philosophy—false because its mistaken notion of reality has directed it to study *what is not.*

Aquinas, on the other hand, was a firm realist. He sunk the foundations of his metaphysics deep enough into the ontal world to embrace the whole of reality when he agreed with Aristotle that metaphysics "is a certain science which deals with being, according as it is being—as a subject—and deals with 'what is in being by its nature,' that is the per se attributes of being."[2] So defined, metaphysics becomes a study of *that*

[1] *De Ente et Ess.,* C. 1, 1. [2] *In Met.* IV, 1, n. 529.

which is in its character of *is-ness* (secundum quod ens). If metaphysics is the study of everything that may be called being (of ens secundum quod est omnibus commune,[3]) precisely as far as it is being, pure and simple, without reference to the determinations which limit it to this or that mode, then this first philosophy, as Aristotle called it, represents the deepest shaft that reason can drive into reality.

Such a science, while considering its object in the light of the highest abstraction, nevertheless does not have abstraction for its object. If that were so, Plato's metaphysics would prevail against Aristotelian realism, and Kant's attack on the five ways would be more than misconceived. Metaphysical abstraction is the *objectum formale quo,* the light of metaphysics; the *objectum formale quod,* the subject-matter, is being. To confuse these two notions would be to make metaphysics the science of the Platonic ιδέαι or the Hegelian *Ideen,* a science of 'that which' but not the science of 'that which is.' We would again be confusing the part, the essence or form as it is called, with the whole, viz., being; metaphysics would simply surrender its right as a science of the real and become, like mathematics, a science of idealized reality.

The vocabulary of Aquinas is eloquent of his own thought on the question.[4] He called metaphysics the science of *ens,* being. Now *ens* is a concrete term. As Fabro writes: "Being is a participial term with an active sense, indicating in the concrete the exercise of a formality, that of beingness."[5]

[3] *In Sent.* III Dist. 27, 2 a. 4 sol. 2.

[4] The existential character of Thomistic metaphysics was discussed in the pages of this review by Phelan, G. B. It was here shown on the basis of certain texts, notably his commentaries on Boethius that Aquinas was certainly not given to an "essentialist" or Platonic metaphysical system. E. Gilson has also shown the central role played by the notion of existence in the metaphysics of St. Thomas, "Le Thomisme et les Philosophies Existentielles," *La Vie Intellectuelle,* 1945, No. 5, pp. 144-155.

[5] "Ente è un termine participale di senso attivo, che indica in concreto l'esercizio di una formalità, quella dell'essere." Fabro, C., *La Nozione Metafisica di Partecipazione secondo S. Tomaso d'Aquino.* Milan, 1939, p. 190.

Aquinas refers to *ens* as *id quod est,* id cujus actus est esse, id habens esse. "The notion of being is taken from the actuality of existing, not from the thing to which the actuality of existing is proper." [6] *Ens* does not signify only esssence. Fabro writes that "to the concrete term, '*Being,*' correspond in the abstract, within Thomist thought, two terms, '*Essence*' and '*Existence,*' that are intended to signify two actualities (from which is understood to result real being), namely, the act of essence and the act of existence, or indeed the *being of essence* and the *being of existence.*" [7] It is not a semantic fallacy to conclude from the vocabulary of Aquinas himself what he conceived metaphysics to be.

Yet there are three divergent opinions among those who purport to follow St. Thomas. Cardinal Mercier concludes that: "According to Aristotelian views the principal object of metaphysics is the *substance of individual things* which exist in nature and afford us experience." [8] Aquinas may also be cited, it would seem, to support this opinion: "That, however, which is a subject in such a way that it is not the attribute of anything else is a substance. Hence, in those sciences whose subject-matter is some substance, that which is the subject-matter can in no way be a property; this happens in first philosophy and in natural science which concerns a physical subject." [9]

[6] "Ratio entis ab actu essendi sumitur, non ab eo cui convenit actus essendi." *Ver.* 1, 1 ad 3 in contr.

[7] ". . . al termino concreto '*Ente*' corrispondono in astratto nel pensiero tomiste due termini: '*Essenza* ed *Essere,*' che stanno a significare due attualità, dalle quali si comprende risultare l'ente reale, cioè l'actus essentiae e l'actus existentiae, ovvero l'*esse essentiae* e l'*esse existentiae.*" Fabro, *op. cit.*, p. 193. Along with this exegesis should be cited that of Gilson who speaks of "cet esse que l'ontologie thomiste pose au coeur le plus intime de chaque être et qui le constitue bien plutôt meme qu'il ne lui appartient." *Op. cit.*, p. 149.

[8] Mercier, *A Manual of Modern Scholastic Philosophy,* London, 1932, pp. 413-4 (Italics Mercier's).

[9] "Id autem quod est subjectum ita quod nullius est accidens, substantia est. Unde in illis scientiis quarum subjectum est aliqua substantia, id quod

This passage would seem to indicate that Aquinas was claiming for metaphysics the domain of studying the substance, as opposed to the properties or accidents, of real things and that Aquinas did not believe metaphysics to be competent in the whole ambit of being, apart from all determinations.

Harper, supporting his views on the traditional teaching that the object of metaphysics is being, nominatively understood, argues that "as a noun, it abstracts from all conditions of time and represents pure Quiddity or Essence, free and unconditioned." [10] "Being," he adds, "in its nominal signification, represents Essence, Quiddity, or Nature of a thing without taking count of its existence actual or possible." [11]

M. Maritain, against the claims of contemporary existential philosophy, against scientism, and other anti-scholastic views which assert that the traditional metaphysics is not the study of a real object, insists that the being of metaphysics is existential essence. "Platonists tend, in general, to limit the object of human intelligence to essences, whereas the profound direction of the philosophy of St. Thomas brings intelligence, philosophy, and metaphysics not only to essences but to existence itself, that perfect and perfecting term, that final achievement of being." [12]

On Mercier's views, it is difficult to see how the science of metaphysics can be preserved in scholastic form. "These concrete things existing in nature," he holds, "form in the *ontological* order the staple of all reality, and in the *logical* order

est subjectum nullo modo potest esse passio, sicut est in philosophia prima et in scientia naturali, quae est de subjecto mobili." *In II, Post Anal.*, 5.

[10] Harper, *The Metaphysics of the Schools.* London, V. I, p. 48.

[11] *Ibid.*, p. 49.

[12] "Les platoniciens ont, en général, tendance à limiter l'object de l'intelligence humaine aux essences, tandis que la direction profonde de la philosophie de St. Thomas porte l'intelligence, et la philosophie, et la métaphysique, non seulement aux essences mais à l'existence elle-même, à ce terme parfait et perfectif, à cet ultime accomplissement de l'être." Maritain, J., *Sept Leçons sur L'Etre*, Paris, 1933, p. 26.

the ultimate subjects of all predication; consequently they are termed primary substance (*οὐσία πρώτη*, substantia prima)." [13] Metaphysics studies reality in its first intention, and thus far Mercier's views seem to be correct. But metaphysics studies accident as well as substance—an objection that Mercier attempts to circumvent by pointing out that the science studies as its secondary object the *accidental determinations* of substance.[14] This response, however, cannot be sustained. Both accident and substance consort in being; they have their beingness in common. So long as metaphysics stops short at the determinations of being, we have not yet attained the most ultimate reality, the most ultimate science, the science which studies not only the determinations of being but the being of the determinations.

There is a capital distinction between the reality we study and our way of studying it. The human mind cannot think without the concept of substance, a difficulty that Eddington, for example, who wrote so exuberantly against the *ουσία* of Aristotelianism, could never quite explain away. Even in the study of accidents as such, we conceive of the *ens entis* in the manner of substance. Witness the quasi-substantialization of quantity in mathematics. Hence, the objective concept of being in metaphysics is studied *per modum substantiae.* It is *in se stans.* It is not conceived in its relation to a subject of inherence. This does not mean, however, that it is a substance or accident or any determination of being at all. It is, as Aquinas indicates in the passage cited above, not the property (*passio*) of another subject.[9] It is indifferent to substantial or accidental modes of being. The equivocation in the word, *substance,* may have given rise to Mercier's views.

Harper seems to be at the other extreme. While Mercier's definition stops at a determination of being, Harper prescinds not only from determination but even from existence. His

[13] Mercier, *op. cit.*, p. 414. [14] *Ibid.*, p. 418.

rather loose terminology makes his ideas difficult to assemble into a coherent skein: though he states in bald words that metaphysics "*prescinds* from the idea of existence." [15] his real thought may be more closely an approach to the view of Maritain than a cursory textual examination would seem to indicate. He avers, for instance, "that all real Being has a transcendental relation to existence." [16] and on this admission alone, it is difficult to see how his final position can be maintained. His ultimate opinion seems to be that being is indifferent to existence, that it may have possible or actual existence.[17] At any rate, it need not *actually* exist beyond its causes.

In reply, it must be pointed out that Harper has not clearly distinguished the nominative and participial uses of the word *being*. He seems to hold that being, as a participle, necessarily denotes contingent existence, existence in time.[18] If this is so, then we cannot explain the participation of created being in the *Ipsum Esse Subsistens* of God, which is above time and beyond contingency. Against Harper's view, it can be maintained that there is a distinction in the use of *being* as a participle. Of God, it is predicated essentially, while in creatures essence and existence are really distinct.[19] In the created order, it is possible to abstract from the actual (participial) exercise of existence in the sense which we shall later see. In this light, it is difficult to see how Harper's view can be justified that "Being, in its participial signification, represents Essence or Quiddity, or nature as specifically determined to actual existence *hic et nunc*." [20] If pure Essence, without order to Existence, is the object of metaphysics, Plato indeed was right. In this light too, Maritain objects that a metaphysics only of essence would allow the highest perfection of reality, existence, to escape it. His idea is so important that his words may be cited at length:

[15] *Op. cit.*, p. 49.
[16] *Ibid.*, p. 48.
[17] *Ibid.*, p. 49.
[18] *Ibid.*, p. 48.
[19] Cf. Gredt, J., *Elementa Philosophiae Aristotelico-Thomistae*, Freiburg, 1937, vol. II, pp. 6-7.
[20] *Op. cit.*, p. 49.

But still existence is the perfection par excellence and as the seal of all other perfection, if it is true that a half-dollar which exists is better than a hundred dollars which are merely possible, and a living dog is better than a dead lion; without doubt, existence says in itself only *positio extra nihil,* but it is the positio extra nihil *of this or of that,* and to place outside of nothing a look or a rose, a man or an angel is an essentially different thing, because it is the actualization itself of all the perfection of each of these essentially diverse objects.[21]

Roger Bacon may have been thinking of such an idea when he wrote: "Unum individuum excellit omnia universalia in mundo." [22] Maritain points out likewise that, if essence *qua tale* is the only object of metaphysics, we cannot distinguish first philosophy from mathematics.[23] In fine, if everything is perfect as far as it is in actuality,[24] then, "existence itself is, as we have said, the seal of all perfection, and cannot remain outside of the highest knowledge of being." [25]

Harper's view then cannot be held up. There remains Maritain's opinion that the object of metaphysics is existential essence. Maritain argues that human cognition is perfected in judgment which reaches down to real existence. Aquinas himself writes: "The first operation (of the intellect) refers to the quiddity of a thing; the second refers to its being." [26] If the perfection of human cognition is the existential essence of realities, philosophy, the systematic formulation of that cognition, must follow a similar path.[27]

But here it is important to distinguish between *existential* essence and *existing* essence. Harper's whole treatment of the question of the object of metaphysics seemingly overlooks the

[21] Maritain, J., *Les Degrés du Savoir,* Paris, 1932, pp. 428-429.
[22] *Opus Tertium* II, 7.
[23] *Les Degrés du Savoir,* p. 431.
[24] *Contra Gentiles,* I, 28.
[25] Maritain, *Les Degrés du Savior,* p. 432.
[26] "Prima operatio respicit quidditatem rei; secunda respicit esse ipsius." *In Periherm.,* I, 5, N. 20.
[27] *Sept Leçons sur l'Etre,* pp. 26-27.

tertium quid between pure essence and existent essence which is essence conceived with reference to existence. Nothing exists in our world actually except individual things which contain potentially or virtually the universals abstracted by the mind. Metaphysics does not treat of individuals as such; no science does, for scientia est de unversalibus. Nevertheless, the object of metaphysics is essence with reference to existence. Maritain makes clear that in what he conceives to be the object of metaphysics there need not be actual existence: he defines being as "what exists or can exist," [28] and he says that "the intellect grasps being not only from the point of view of essence but from the point of view of existence itself—actual or possible—existence apprehended therefore *ut exercita* (. . . as far indeed as it is possessed possibly or actually by a subject.)" [29] But this is a different thing from saying that pure essence is the object of metaphysics, essence that prescinds from existence. Fabro's words on this point are illuminating: "It is noted immediately that '*esse essentiae*' and '*esse existentiae*' are indeed two significations (intentiones) distinct but not independent, that is perfectly separable, because the one implies necessarily a reference to the other; essence cannot be understood except in relation to existence, either as *possible* if the essence is considered in the abstract, or as *real* if the essence is de facto in nature." [30]

Harper seems to have expressed this point in stating "that all real Being has a transcendental relation to existence." [16] A transcendental relation is not in itself an accidental qualification of the subject; it is an exigency in the subject itself

[28] *Les Degrés du Savoir*, p. 428. [29] *Sept Leçons sur l'Etre*, p. 26.

[30] Fabro, *op. cit.*, pp. 193-194: "Si noti subito però che '*esse essentiae*' e '*esse existentiae*' sono bensì due significati (intentiones) distinti, ma non indipendenti, cioè perfettamente separabili, poichè l'uno implica necessarimente un riferimento all'altro; non si puo comprendere un'*essenza* se non in relazione all' esistenza, o come *possibile* se l'essenza è considerata in astratto, o come *reale* se l'essenza è realizzata di fatto in natura."

(relatio secundum dici). Aquinas writes: "we can say that being, or that which is, exists, as far as it partakes of the act of being." [31] But the being of metaphysics need not include the actual exercise of this participation. If Harper's rather misleading terminology simply means that being in metaphysics is "in a state of indifference with regard to existence," [32] his point can be conceded, provided existence is understood in its actual exercise. The being of metaphysics may be either actual or possible in its status with respect to its causes. But if Harper means that the object of metaphysics is studied without reference to existence, and this seems a more likely interpretation, then he is disregarding the fact that being (ens) is a concrete reality composed of essence and existence in the created order and identified in God; he is overlooking the fact that man's knowledge refers to the esse of things (verum sequitur *esse* rerum); he would permit the highest perfection of reality to elude completely the grasp of the highest science; and finally, he is neglecting the capital difference which obtains between mathematics and metaphysics, thus opening the way for a man like Jeans to aver that we have exhausted the knowability of the real in our mathematical equations. In sum, after admitting the transcendental relation of being to existence—a fact which Fabro has so well studied and stated—Harper proceeds to disregard his admission and, unless we have misinterpreted his thoughts, comes dangerously near to a contradiction, if indeed he does not come all the way.

The analogical nature of being is further evidence that existence must be included in the concept. Analogy may be of three types in its metaphysical sense: analogy of inequality, of attribution, and of proper proportionality.[33] A discussion of the

[31] ". . . possumus dicere quod ens, sive id quod est, sit, in quantum participat actum essendi." *In Boeth. de hebd*, lect. 2.

[32] *Op. cit.*, p. 49.

[33] These names were applied by Cajetan to the divisions made by Aquinas in commenting on the *Sentences* (Lombard) in which the Angelic Doctor

analogies of inequality and of attribution is beyond the scope of this inquiry. Suffice it to say with Father Phelan: "The only analogy which is adequate as a metaphysical principle is the analogy of proportionality properly so-called." [34] In the analogy of inequality—where various beings participate in the same formality but not in the same degree—the analogy is said to reduce to univocality; and in the analogy of attribution, only one analogate possesses the formality, while the others possess it only extrinsically, viz., by their reference to the first.[35] Phelan defines the analogy of proper proportionality as one where there is "a strict proportion of proportions in which the terms of one proportion are not proportionate to the terms of the other proportion, but the whole proportion between the terms on one side of the relation is proportionate to the whole proportion between the terms on the other side of the relation." [36] The analogated perfection is present in each of the analogates according to the mode of each's being. It is present intrinsically. God, angel, and man are each said to be; but existence is present to each according to the various modes of essence which measure their existences. As Aquinas remarks, they all refer to one formality, but they differ in their references (habitudines).[37] Or as Phelan explains: "This is true analogy; for it is *in being* (essendo) that all beings are one yet the very being (*esse*) by which they are one is diverse in each though proportionate to the essence of each." [38] It is by virtue of the analogy of proper proportionality that Thomistic philosophy escapes agnosticism

distinguishes analogies: 1) secundum esse sed non secundum intentionem (inequality); 2) secundum intentionem sed non secundum esse (attribution); 3) secundum intentionem et secundum esse (proper proportionality). *In Sent.* I, dist. 19 q. 5 art 2 ad 1.

[34] *St. Thomas and Analogy* (The Aquinas Lecture 1941), Marquette University Press. Milwaukee, 1941, p. 39.

[35] Byles, W. E., "The Analogy of Being," *The New Scholasticism*, 1942, pp. 335 ff.

[36] *St. Thomas and Analogy*, p. 40.

[37] *In Met.* IV, lect. [38] *St. Thomas and Analogy*, p. 30.

and anthropomorphism with regard to God,[39] and monism and exaggerated pluralism with regard to being in general.

Analogy has special bearing on the object of metaphysics for two reasons: a) it preserves the unity of this object amid the diversity of being; and b) it indicates that the object is not pure essence but existential essence.

a) Analogy steers a middle course between univocity, which ends in monism and the death of science,—for there is no systematic study when there is nothing to systematize but only one being—and equivocity, which ends in pluralism in the extreme and the death of science—there is no systematic study when there is no unity to make system possible. Analogy saves both unity and diversity. There is unity, as Phelan says, in the proportion of proportions, but diversity in the terms of each proportion. In the masterly words of Aquinas, "Sometimes indeed (something is predicated of diverse things) according to formalities which are partly different and partly not different: different indeed as far as they imply different relationships, yet the same as far as these different relationships refer to one and the same thing: and that is said to be an analogical predication, that is proportional, as far as each thing according to its own peculiar relationship (diversity) refers to this one thing (unity)." [40] As far as each analogate has reference to being, we preserve the unity of metaphysics, and as far as each reference differs, we preserve the diversity of being. In such a conception, we save both unity and plurality. Aquinas saves the unity of the being of metaphysics when he speaks of analogates as realities "whose name is alike and the definition

[39] Penido, *Le Rôle de l'Analogie dans la Theologie Dogmatique*, Paris, 1931, C. 1.

[40] "Quamdoque vero (aliquod predicatur de diversis) secundum rationes quae partim sunt diversae et partim non diversae; diversae quidem secundum quod diversas habitudines important, unae autem secundum quod ad unum aliquid et idem istae diversae habitudines referuntur, et illud dicitur analogice praedicari, idest proportionaliter, prout unumquodque secundum habitudinem (diversity) ad illud unum referatur."

of the thing is the same according to a proportion." [41] Maritain writes that the concept of being "is essentially analogous, polyvalent, it is only one itself in a simple unity of proportionality; purely and simply plural and one under a certain relationship." [42]

b) If being is analogical, essence, without reference to existence, cannot be the object of the deepest and highest study of being. We cannot study essence apart from its existence. In God, the two concepts are identical; in created being, essence is the measure of the existence which it receives and limits. The essence of beings alone cannot preserve the unity of the science of metaphysics; essences differ from one another in their essential constitution. It is because they share in *being* that they are alike. Phelan pointed out that in the metaphysical analogy, "the terms of one proportion are not proportionate to the terms of the other," and Aquinas affirms that the analogates have different references (diversas habitudines important). If essences, "the terms of the proportion," be the object of metaphysics, we have only diversity. We have "analogates" without the analogue, and hence they are not analogates at all. The only other alternative is to assert the univocity of essence. Then nothing exists except the Paramenidean One.

On the other hand, the unity of the science and the diversity of being can be saved by the concept of existential essence; on this basis we can understand how beings can be the same, as far as they refer to existentiality; and yet different as far as their references differ. God is not only existent. He is Existence Itself. Created being participates in existence. Its existence is the stamp of its perfection. Its essence signifies its imperfection as far as it is necessary that existence be received according to the limited mode of the receiver. In the created order this perfection of existence as found in God is participated

[41] *Ver.* 2, 11.
[42] *Sept Leçons sur l'Etre*, p. 73.

by creatures who each reflect a different facet of Divine Beauty and Divine Being. Created beings are only possible because they express in a limited way the perfections found in God; by the same token, a thing may be said to be impossible because, incapable of expressing any perfection of God as a positive entity, it would be a complete imperfection; and a complete imperfection, just as a pure potentiality, cannot exist. Therefore, whatever exists expresses a perfection, expresses something of the actuality, the existence of the Supreme Being. Without the concept of existence, the being of essences, pure and abstract, cannot be understood. Analogical participation, which forms the backdrop of Thomistic metaphysics, requires the study of essences in their order towards existence and makes the great empire of being intelligible on the basis of its existential, perfection-giving character. The imperfect, qua tale, the non-existent, qua tale, is simply and purely unintelligible. Being is fundamentally intelligible not because it is this or that being (as determined by its essence but simply because it is being as being).[43] Contractions of being indicate imperfection, but as far as these beings are, they are perfect, and as far as they are perfect, they are intelligible.

Thomistic metaphysics, a vital and organic thing, grows deeper and higher and has many branches. It reaches ever farther toward the sky, toward the horizon of eternity, to borrow Aquinas' own figure, because it has taken firm root in the rich soil of that which *is,* the great world of being.

VINCENT E. SMITH.

[43] "Patet ergo quod res quantumcumque se habeat sub quacumque forma existens, vel privatione vel defectu, intellectui divino adaequatur . . . Igitur est veritas in omnibus quae sunt entia, quia hic sunt quae in summa veritate sunt." *Ver.* 1, 10.

FROM THE SECRETARY

With this issue of *New Scholasticism* we are inaugurating a new department of our Journal with the above heading. It is designed to give news and views of our Association, from time to time, from the office of the Secretary. As a beginning we wish all the members a happy and successful New Year. We hope those of you who were able to attend our recent Milwaukee conclave felt repaid for the effort you made in these difficult days of travel. We hope to resume our annual Proceedings with a new volume to appear during the coming Spring, containing all the papers read at our recent meeting. With the nineteen preceding volumes it constitutes a fair cross section of historical and contemporary philosophy in which the members may take some pride. Invitation is still open to all to help lengthen our list of members by personal solicitation of individual members to persons and institutions in their respective circles who have not yet associated themselves with us to make our society the great center of Neo-Scholasticism in America. There is no substitute for personal interest in our society.

We now have seven regional Conferences within our national organization, designed to increase local interest in our work by presenting periodically, programs in each of these regions. Those who cannot attend the annual national meetings may find it possible to come to gatherings closer at hand. We especially invite our members in Chicago, Milwaukee, Cincinnati, Cleveland and Buffalo to form regional conferences in their respective cities. The Secretary requests local chairmen to forward announcement of their proposed meetings and summaries afterwards, for publication in this Department.

Not all members have access to all the philosophical journals and hence reviews in such journals about the work of the Association may not come to their attention. We therefore

publish the following review of our last *Proceedings* which appeared in the November 1945 issue of the *Philosophical Review*. While we do not agree with the strictures of Professor Abraham Edel of the College of the City of New York it is nevertheless valuable to see ourselves as others see us. We invite reaction from the members. Herewith is the review.

Proceedings of the American Catholic Philosophical Association. Volume XIX: Philosophy in Post-War Reconstruction. Nineteenth Annual Meeting, December 29 and 30, 1943. Washington, D. C., The Catholic University of America, 1944. Pp. 200.

The papers of this volume deal chiefly with general philosophic bases of post-war reconstrution such as peace, man's nature, the Christian concept of law, education and so forth. Two enter on more specific issues—moral problems of a victorious army of occupation, and international cooperation in philosophy. Reports of round table discussions occupy a third of the volume, and there is a supplementary check-list of publications of interest in neoscholastic jurisprudence.

The general approach taken in most of the papers is that post-war problems can be solved only by a fundamental emphasis on the religious as against the secular. There are attacks on "the bankrupt emotionalism of Kant," the "bankruptcy of pragmatism," the "positivistic worship of science," "pagan imperialism and totalitarian nationalism, and the corruptive principles of naturalism," and there is warning of the "uselessness of any planning for the future that fails to take account of the divine direction of human activity" (60). There is no serious reckoning with these opposed philosophies; the evils of the contemporary scene are simply laid at their door.

In the light of this general thesis it is interesting to find included in the proceedings a paper by Professor Ralph Barton Perry explicitly challenging the whole approach, Professor Perry, whose recent writings and communications to the press have shown him extremely sensitive to the needs of broad unity in the domain of thought as well as action, calls for a partnership between Catholicism and liberalism, and by implication an extension of this partnership to all men of good will. The essence of this proposal (backed by considerable analysis of political thinkers) is that different groups "distinguish between their social creed founded on good will, and the dogmas which they reserve for their own

orthodox adherents" (86), that the moral ideal of harmonious human happiness remain the goal of cooperative action as having meaning and appeal independent of any specific ontological premises (the latter being matters of persuasion and voluntary adherence), that distortions, wholesale recriminations and rejections be replaced by an attempt at mutual understanding.

Professor Perry's forthright statement of the problem should constitute a significant contribution to national unity, in view of the fact that anti-Catholicism, like anti-Semitism, anti-Negro prejudice, or anti-Communism, is one of the sources of dissension to-day. The exhibition of common ground can aid likewise in persuading Catholic philosophers to abandon their traditional reluctance to cooperation in social philosophy on any grounds short of their own special premises. Professor Perry's proposal clearly recognizes the practical importance of cooperation in social theory. It is guided by the fear that in the competition of various philosophies to be the sole exclusive basis of democracy none of them will win, while democracy will lose. It is interesting, in the present volume itself, to note that in the round table discussion on legal education Catholicism finds itself fighting the counter-assumption that pragmatism *alone* is the basic philosophy of democracy (150-157).

ABRAHAM EDEL.

COLLEGE OF THE CITY OF NEW YORK.

Professor Edel appears to have approached his consideration of the Proceedings with the customary pre-conceptions so frequent in contemporary thought about the scholastic viewpoint rather than the evidence at hand. Certainly this Association has made every effort at a meeting of all philosophical minds in the field of social philosophy but it cannot be said there has been much reciprocity from non-Scholastic philosophers. Mere appeasement has not proved very successful politically and it is not likely to accomplish more philosophically.

CHARLES A. HART.

Catholic University of America.

BOOK REVIEWS

Philosophical Understanding and Religious Truth. By ERICH FRANK. London, New York, Toronto: Oxford University Press. 1945. 209 pages. $2.50.

To Aristotle Metaphysics was the "Divine Science" and therefore the foundation of natural religion. In another place he identifies metaphysics and theology. Dr. Frank opens his work with the words "The conflict between religion and philosophy is as old as philosophy itself. Even Plato speaks of it as dating back to times long past." The footnote eighteen pages later admits "To be sure, Plato, in the passage referred to, does not speak explicitly of the quarrel between philosophy and religion, but of the 'ancient feud between philosophy and poetry.'"

Undaunted by this admission the author proceeds: "Is not all we know about the nature of man and the character of the world strictly opposed to the teachings of religion"?

Like Descartes and Kant, like de Bonald and Lamennais, Dr. Frank tries to show how religion can have meaning for the philosopher. He begins his problem by reducing metaphysics to criteriology and in the language of Kant's "Critique of Pure Reason" suggests; "Therefore the complex problem, 'what is man,' can best be expressed in the old threefold question: 'What can I know?' 'What ought I to do?' 'What may I believe?'"

After apologizing for speaking of God "at a time when the word has lost its meaning for most people" he accepts Kant's critique of the proofs, salting them to his own taste. "He who does not believe in God is precisely the one who refuses to take this step from a contingent and relative world to an unconditioned cause."

"It seems that everywhere the requisite presupposition of a proof of God is the belief in His existence. Philosophical proofs of God, therefore, were meaningful in the Middle Ages when those people whom the philosophers addressed believed unreservedly in the truth of religion. But today, when the philosopher has to reckon with modern man, who does not acknowledge anything except the indisputable facts of science and their scientific cogency, these abstract demonstrations can hardly carry weight. They are an inheritance from times past."

"In medieval thought, then, the arguments for the existence of God

owed their validity to the fact that here the philosopher was still one of the faithful. Modern philosophy, however, starting with Descartes, no longer rests upon faith, but on the contrary is based upon doubt, upon the desperate idea that at the bottom of existence there may be no God, but rather a wicked genius, the relentless forces of nature or the blind instincts of life by which man is deceived."

Having satisfied himself that reason comes to certain conclusions because there are already prejudices in the conscious or subconscious mind, still following his master, Kant, the author now proceeds to discover a non-rational approach to God. The reader here wonders why this approach could not be as much vitiated by underground prejudices as reason which he discarded.

Somewhat inspired by Kirkegaard who made a philosophy out of a deliberately frustrated love affair and the consciousness of his father's sins, Dr. Frank now proceeds to make the very denial of God the basis of his affirmation that God exists. "Thus it may be permissible to make the paradoxical statement that the real proof of God is the agonized attempt to deny God."

What Rousseau was to Kant that Kirkegaard becomes to Dr. Frank. After denying the value of reason and proclaiming the irrational sentiment, one wonders what the author meant in his preface: "This book addresses itself to the philosophical understanding rather than to religious sentiment."

Those who are used to reading Barth, Kirkegaard, and Brunner can perhaps understand why the very next chapter should be on the subject of Creation, for these writers have a general tendency to skip history and reality in their flight to Deity. Anyone who believes that creation means "ex nihilo" will not be able to understand it, so Dr. Frank purges it of its "superstitious" trappings and understands it to mean a limitation on human existences. "The individual wakes up to the fact that he has been thrown into this alien world as an utterly dependent being. He does not know whence he came or where he is going. Our origin and our destiny remain inscrutable to reason. That is the fundamental fact from which all philosophy has to start." Thus, by a peculiar magic, man who cannot come to a knowledge of the Creator by reason is suddenly confronted by the idea of creation which "does not explain human existence, but makes man aware of it."

Somewhat suspecting that this idea is hardly rational, the author in the next chapter admits that it is only an "idea of imagination." By

imagination he means the rectification of subjective ideas by relating them to other things. Truth is relationship.

Kant once admitted that he had to kill reason to make room for faith, and in the end faith was made a blindweaver working at his loom. So Dr. Frank rejects reason to court belief. Reason and religion then interact with one another, philosophy elucidating belief, and belief elucidating philosophy. From now on the philosopher must recognize that his principles do not have real truth in themselves, but are determined by a higher truth which he can neither grasp nor prove, but only presuppose. Thus does reason "gain a glimpse of the Absolute as the Present which lies in the Future."

Thus Dr. Frank makes another and belated contribution to the irrationality of our age, and pleads for a faith that is unreasonable, and a belief that is nothing more than a leap in the dark. His ideal is the highest, namely to save religion; his documentation is abundant, but when all is said and done, the book is nothing more than Kant's basic idea brought up to date.

Despite the fact that Dr. Frank believes that the Scholastics taught that philosophy is faith seeking understanding, it would be difficult for him to find any one of them maintaining that you could ever lay the foundations of faith except by reason. If reason cannot prove the existence of God, then belief in God is unreasonable. That is why this reviewer who, while thanking God he has faith, nevertheless does not thank Dr. Frank for a fact that is unreasonable. In the ages of faith men believed in reason; in these days of anti-reason men believe in "faith."

FULTON J. SHEEN.

Catholic University of America.

Basic Writings of St. Thomas Aquinas. Edited by ANTON C. PEGIS. Random House. 2,276 pp. (2 vols.) $7.50.

Sincere thanks are due to the editor and publishers for this excellent edition of the *Basic Writings of St. Thomas Aquinas.* With this edition Random House again wins the gratitude of scholars who entertain the desire of having the Great Books within easy reach. Thomists, particularly, will welcome this present work as satisfying, at least to an extent, a need long deeply felt. Those who have witnessed with joy the increasing interest in Thomism in this country have found it

regretable that the writings of St. Thomas were almost inaccessible in the vernacular. The translation of the English Dominican Fathers, which is the only complete English translation of the *Summa Theologica* runs to many volumes, and even when these were obtainable, which has not been the case for several years, they were not inexpensive. This new Random House edition, while unfortunately it does not include the entire *Summa*, does place within reach of interested students a considerable portion of the *Summa* in two handy and inexpensive volumes. And for this service Thomists are grateful to Random House, and to their capable editor, Professor Pegis.

From the standpoint of the mechanics of design and printing, these two volumes leave little to be desired. Their general format, choice of type, use of italics, and neat, bold type will make for pleasant reading and study. It may be said without exaggeration that, except perhaps for the Leonine, St. Thomas has not appeared in any language in a more attractive edition.

The editor merits thanks for the scholarly apparatus which he has incorporated into the work. The contribution which the Ottawa Institute of Medieval Studies has made in determining the bibliographical references to the writings which St. Thomas quotes and cites is indeed considerable. Professor Pegis has taken advantage of the scholarly research of the Ottawa Institute, and has inserted references, based on those of the Ottawa-Piana *Summa Theologica*, in inconspicuous footnotes, which will offer valuable aid to the careful student, without annoying the less serious reader. Besides the annotations attached to the text, there are, at the end of the second volume, additional aids to scholars interested in the rich theological and philosophical background of the *Summa*. There is an index of authors cited by St. Thomas, and another more complex index summarizing the quotations which St. Thomas uses, arranged according to the authors quoted, and referring the reader to the place in St. Thomas' writings where the quotation appears.

The English text is that of the English Dominican Fathers, with some changes in favor of easier reading. Numerous revisions, aimed at more accurate statement, and at capturing more thoroughly something of that simplicity of St. Thomas' own Latin style, enhance the value of the translation. It will, undoubtedly, always be true that St. Thomas, like other great authors, will best be understood and appreciated in the language in which he wrote, and yet there is much about the present

translation that is remarkably akin to the original. It is sufficiently literal, without being so painfully literal as to be cast in a strange idiom.

The first of the two volumes contains all of the *prima pars* of the *Summa Theologica*, in which St. Thomas treats of the nature of theology and the necessity of revelation, and gives extensive treatises on the One God, the Trinity, creation, the angels, the work of the six days, man, Divine conservation, concurrence and government. The editor has chosen to include in the second volume book three of the *Summa Contra Gentiles* (which deals with the end of man, and man in relation to Divine Providence), and the portions of the *prima secundae* of the *Summa Theologica* which treat of human acts, virtues and vices, sin, law and grace. The volume concludes with the treatise on faith taken from the *secunda secundae* of the *Summa Theologica*.

The need for a complete edition of the *Summa Theologica* in just such a format as that offered in these volumes is so great that one can hardly refrain from wishing that this was not a "Basic Writings" set, but an entire *Summa*. This is said, not in criticism of the present volumes, but in the hope that, with this much already done, the publishers may one day see fit to do the complete *Summa*.

There would be little point in arguing with the editor on his selection of material. He has accomplished his purpose, namely, to include what is basic, in the sense of primary and fundamental in the teaching of St. Thomas. The editor is, however, guilty of an over-statement in the introduction where he asserts that these writings are basic "in the sense that they discuss the most important doctrines of Christian theology and philosophy." In this bit of what is presumably sales talk, the editor obviously does not mean to be taken literally. The treatises concerning Christ certainly deserve a place among "the most important doctrines of Christian theology." And the same is true of the treatises concerning the Sacraments, which are the means of participation in the redemption of Christ. The *Summa Theologica* as it is presented in these volumes is a truncated *Summa*, and that literally, for at the summit of theology stands Christ, God made man for the redemption of mankind. The volumes are well named; they do contain what is basic in St. Thomas, but not all of what is most important.

The editor's introduction is a fine piece of historical writing. In the short space of some fifteen pages Professor Pegis describes succinctly, but lucidly, the intellectual world in which St. Thomas lived, the problems which had taken shape, and Aquinas' approach to the

solution of those problems. The insight of the editor into St. Thomas' philosophical understanding of the history of philosophy is that of one who has understood the Angelic Doctor's own thought and that of his historical antecedents.

REV. GERARD JOUBERT, O. P.

River Forest, Ill.

Augustine's Quest of Wisdom. By VERNON J. BOURKE. Milwaukee: Bruce Publishing Company, 1945. Pp. xi + 323.

There are so many parallels between the age of St. Augustine and our own that interest in his life and thought seems more lively now than ever. Perhaps we hear less these days about saints than we do about classics, leaders and heroes but St. Augustine qualifies on all these scores. Such labels of merit and titles of distinction are negligible in comparison with his honor and prestige as Church Father and Doctor but they are legitimate appellations in his case and they have concrete meaning for the secular reader. He also has abundant claim to the rank of genius on the basis of three criteria, viz., originality, versatility and 'mass production.'

The present work is a worthy addition to the books in English on Augustine in the last two decades by Rickaby, Papini, West, Adam, D'Arcy, Dawson, Przywara et al. It is a happy combination of biography and doctrinal exposition and represents a compromise between the scientific case-history, clinical-abstract or anamnesis and the literary, verbose, anecdotal, eulogistic and pietistic narrative so often based on legend, rumor, gossip and hearsay. It is a good psychograph in the best sense of that term and it emphasizes chronological sequence in order to trace the development and maturation of the great Saint's thought (p. 201 f). It is a popularization without too much dilution or deletion and because it is not a mere dialectical skeleton or abstract framework, it can serve as a very useful introduction to Augustinism. It is well documented, has an index and may be recommended for use as a textbook.

On the "human" and emotional side we find treatment of St. Augustine's juvenile delinquency; his worldly ambition; his early indecision, worries and psychological conflict; his pardonable pride; his health; his family problems; the historic mother-son relationship; his fondness for monastic life; his efforts to find time for both pastoral

(episcopal and administrative) duties and for authorial enterprise; his militant role in the polemical field (p. 157) where his aggressive skill in dialectical duels, doctrinal debates and jurisdictional controversies was usually mitigated by his open mind (p. 290) and his courtesy toward his adversaries.

On the doctrinal and intellectual side the author deals with Augustine's youthful paganism and conversion; with the heresies and schisms against which he contended; with his early interest in magic, superstition, astrology and numerology (pp. 28; 32; 105 f; 207; 227) and above all with his Neo-Platonism (pp. 55; 59; 72; 201), his triadism (pp. 112; 220; 225; 242; 250) and his dualism (pp. 19 ff; 55; 93; 111; 184; 249).

Some detailed account is given to Augustinian psychology, to the problem of evil, to the questions of sensation, the origin of the soul, creation, illumination, the "seminal reasons," introspection, the three types of vision, the seven grades of life, the four ways of existing, free will and grace, etc.

DANIEL C. O'GRADY

University of Notre Dame.

Twilight of Individual Liberty. By HAMILTON VREELAND, JR. New York: Charles Scribner's Sons, 1944. Pp. iv + 171.

This little book by a former member of the Faculty of the Catholic University Law School, who has recently been appointed to teach at the Law School of New York University, is primarily a study of the principles of constitutional government and administrative law. However, it touches upon some of the fundamental questions of human liberty in its discussion of many recent cases, and it is the author's opinion that none "can complete an exhaustive piece of legal research concerning any common law rule of substantive law without finding himself sooner or later working in the field of adjective law and eventually in the field of religion, morals, ethics, economics, sociology, philosophy, or emotionalism" (p. 129). With such common interests as these it should have some appeal for philosophers. Furthermore, the use of the natural law as a standard of measurement throughout the book is worthy of note, being unusual in modern treatises.

The author's thesis is that under the Constitution, the American system of government has gone through three separate periods of development, the first extending from the beginning in 1790 under Chief

Justice John Jay to the death of Chief Justice Marshall in 1835; the second, from the accession of Chief Justice Taney until part way through the Chief Justiceship of Charles Evans Hughes, in 1936; and the third period, from 1936 to the present time. It is the enormous expansion of Federal power at the expense of the States and of individual rights which has occurred since 1936, quite apart from war requirements, which gives Dr. Vreeland much concern. In seeking to chart the trend and to analyse its implications, he has found the cause in that current legal philosophy which Mr. Justice Holmes has bequeathed to his successors on the United States Supreme Court. There are many quotations from recent opinions supplied in support of this thesis. The conclusion to which they point is summarized on page 102, where the reader is reminded that Mr. Justice Holmes followed the legal doctrines of Bentham and Austin and the philosophical doctrines of Hobbes and Locke. "It was the concept of unlimited force, that government is a struggle for and application of power," which gave form to the Holmes' philosophy, the author states, and he adds that "with persistent strokes of a brilliant pen, he would wipe out six hundred years of the recorded history of human liberty." The author's comment is that "there can be no place for such a philosophy in the basic law of a free people."

Dr. Vreeland writes with the technique of an advocate building up a case rather than with the completely objective detachment to which the philosopher's mind is accustomed. In effect, what he does is to utilize the critiques of Holmes' philosophy which have been appearing now since 1937 in publications of more or less limited circulation (i. e., Rooney, *Lawlessness, Law, and Sanction*, pp. 114-136; Fr. Gallagher, S. J.'s work at Fordham under Fr. Miller, S. J., recounted by Simms, *Virginia Law Rev.*, 28: 467-487; Fr. Lucey, S. J., in *Social Science* 16: 211; Fr. Gregg, S. J. in *Georgetown Law Jour.* 31: 262-295; and Fr. Ford, S. J., in *Fordham Law Rev.* 11: 255-278), put them in readable and rather graphic form, document them from the cases, and make them available in this book to a much wider audience. In the process, the attack on Holmes becomes pretty severe with few ameliorating considerations furnished for readers who may not otherwise be conversant with Mr. Justice Holmes' character and Civil War experiences. Nevertheless, in view of the adulation which has been accorded Mr. Justice Holmes in the uncritical acceptance of his basically erratic philosophy, whether consciously or unconsciously espoused, it is prob-

ably necessary, though none the less regrettable on that account, that the pendulum must swing far in the other direction in order that the implications of that philosophy may be properly understood and corrected before irreparable damage is done. With the intention of restoring a desired equilibrium to our legal order, Dr. Vreeland has written an able brief on behalf of the philosophical appraisal of current legal trends.

MIRIAM THERESA ROONEY

Columbus University Law School,
Washington, D. C.

Fate and Freedom: a Philosophy for Free Americans. By JEROME FRANK. New York: Simon and Schuster, 1945. Pp. viii + 375. $3.00.

In order to evaluate this book fairly, the reading of Judge Frank's earlier book, *Law and the Modern Mind*, which was published fifteen years ago, should be made a prerequisite. That book was both provocative and challenging. (See Rooney, "Law and the New Logic," in *Amer. Cath. Phil. Assoc. Proc.*, 1940, pp. 209-211; *U. Det. Law J.*, 4:143-145, Mar. 1941). This one is no less challenging but more philosophical in its insights. Most of all, its attitude compels greater respect. Instead of the annoying cocksureness of unhibited youth, no matter how brilliant, there is manifested on almost every page a willingness to reexamine the foundations of earlier opinions, to look into the reasons for different conclusions, and to admit, where the evidence on both sides is conflicting, that perhaps the other side may not be far wrong. It is an attitude almost as uncommon among modern intellectuals as it was unanticipated in the author of the earlier work, but it is none the less welcome for that. Experience on the bench has apparently done as much for Judge Frank as he has done for the law. If the words of Bracton's definition of law be remembered, the emphasis with regard to this latest contribution to the law could now be placed on *jubens honesta.*

Judge Frank's thesis is that free-will and not determinism is the only explanation of man's place in the cosmos which is consonant with the American way. In explaining why he has reached this conclusion he takes the modern historians to task in the first chapters and the modern scientists in the later pages. He demonstrates the error of

their contentions on behalf of inevitability by tracing the derivation of their assumptions to alien philosophies, chiefly German, which are quite incompatible with the fundamentals of American tradition. In doing this he displays a virtuosity reminiscent of his earlier work in the number and variety of his illustrations which is both flattering and fascinating to the reader whose interest is thereby sustained in following his thought. Indeed his disagreements with many of the accepted educational leaders of our day are so unexpected that each page is turned eagerly to see what theory is disputed on the next. But his arguments are not *ad hominem*. He is convinced that unless the principle of free-will is restored to its proper place in American life, the effect will be disastrous upon our character as a people. That is the message he has undertaken to convey and he has done it effectively.

Of course there are many things said in the book which one cannot accept entirely. To a person trained in the distinctions of Thomism, there are places where Judge Frank veers now toward voluntarism, now towards probabilism, instead of holding fast to the intellectualism of Aquinas whom he so frequently defends. But if those who hold these opinions can all be good scholastics without settling the differences among themselves, they can scarcely repudiate his eclecticisms on that account. When he goes further away from Thomism toward the concept of the world as will and idea, à la Schopenhauer, one can detect his failure to throw off completely the modern attraction to subjectivism. And now and then there are statements retained from the earlier books which, in the course of a few more years as fruitful as the last fifteen, Judge Frank will undoubtedly abandon himself. Unlike his first book, this one can be read for points of agreement uppermost in mind instead of disagreements, and this in itself is a proof that the book succeeds in meeting its own expressed desire for the elimination of the divisive antagonisms among the American people.

In spite of its sub-title, the book is not profound enough to be a satisfactory philosophy for Americans, a fact acknowledged by Judge Frank, who attributes to his publishers that ambitious appellation. It touches upon the subject-matter of philosophy, however, not only in its acute analysis of popular arguments for fate over freedom, inevitability over liberty, and determinism over free-will, but also in the clever distinctions made between various thinkers, including Democritus and Pythagoras, Calvin and Luther, Thomas More and Karl Marx, Hutchins and Adler, and Einstein and Langmuir. He retains his admiration for

Mr. Justice Holmes and for William James, and explains anew his advocacy of non-Euclidean logic. Most important of all, from a man who once implied that Scholasticism and obscurantism were synonymous, is his advocacy of Thomas Aquinas as a thinker not unworthy of the attention of intelligent Americans. It is advocacy and not partisanship which characterizes his attitude and the jury will not offend the attorney for the defense if they fail to acquit after he has used up all the arguments he can find for his client. It is in effect a rational attitude which will not reject new arguments and new evidence if they promise deeper knowledge, and which tends to become humble rather than agnostic as this knowledge deepens.

It is difficult to resist quoting many passages which are striking in the freshness of their approach, for to do so would justify some of the general evaluations expressed here. But the book deserves to be assimilated as a whole and not by exceprts. As a sample of its challenge perhaps a sentence or two, taken from the note on the use of the term natural law, in the appendix, will not be superfluous as an *hors d'hoeuvres:*

> In some twenty years' practice as a lawyer, I have had, as intimate associates, Catholic lawyers trained in natural-law schools; I have never observed that their training made the slightest difference in their methods of approach to legal or social problems or in the conclusions which they reached in solving them. I have recently asked able Catholic lawyers to point out to me any of my own judicial decisions which would have been decided differently on the basis of natural-law principles, but I have received no answer (p. 295).

MIRIAM THERESA ROONEY

Columbus University Law School,
Washington, D. C.

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BOOKS RECEIVED

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